BEFORE THE
NATIONAL LABOR RELATIONS BOARD

DOMINION NUCLEAR CONNECTICUT, INC.,	)	**Case No. 1-RC-106263**
Employer	)	
And	)	
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS/IBEW, LOCAL 457, AFL-CIO,	)	
Petitioner	)	

PETITIONER'S BRIEF ON REIVEW OF THE REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

INTRODUCTION AND STATEMENT OF THE ISSUES PRESENTED

The Board has ruled that the public utility standard for unit determination applies in this case, and that the parties should address on review whether the unit found appropriate by the Regional Director, or any unit other than the plant-wide unit proposed by the employer, constitutes a well-defined administrative segment and thus would be appropriate under the applicable unit determination standard.

The Board's Order actually raises *two* fundamental questions. First, the Board must decide the *scope* of the appropriate unit under the public utility presumption. Second, the Board must also decide the equally important question whether the public utility presumption favoring systemwide units applies not only to a unit's *scope*, but also to the *question* of unit placement, that is the appropriate composition of the unit.

Thus, once the Board decides whether the petitioned-for physical P&M unit should be systemwide (or "wall-to-wall")[1] in *scope*, or whether its scope can be narrowed to a "well-defined administrative segment," the Board is still left with the question of which of the employer's employees belong in the physical P&M unit. The employer has argued, and the Regional Director has agreed, that the public utility presumption *also* dictates that virtually every employee working within the *scope* of the unit must be included in the physical P&M.

This is a fundamental error that the Board must take this opportunity to correct. It is undisputed that the Board has long held that systemwide units are optimal for bargaining in the

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[1] Petitioner asserted below and in its Request for Review that the "wall-to-wall" construct is one of unit *placement* (i.e., composition), which has been applied only in the retail industry and never in the public utility industry, and not one of unit *scope*. Consequently, petitioner viewed the term as inappropriate in describing the scope of a unit under the public utility presumption. Petitioner recognizes, however, that the Board has in some cases referred to the systemwide construct as "wall-to-wall." For this reason, petitioner will cease arguing over the meaning of "wall-to-wall." Petitioner will, however, continue to insist that the Board does not apply a "wall-to-wall" unit *placement* presumption in the utility industry.

utility industry, and that the presumption can be overcome by showing that the petitioned-for employees work within a well-defined administrative segment of the employer's operations. And the Board applies this systemwide presumption and its exceptions to the question of which facilities or organizations of the employer must be part of an appropriate unit in scope. *See, e.g., PECO Energy CO.,* 322 NLRB 1074, 1079-80 (1997) and cases cited therein.

But the Board has *never* held that the systemwide presumption also dictates unit composition. Instead, once the Board establishes the scope of the appropriate unit under the public utility presumption, it returns to traditional community of interest principles in analyzing questions of unit placement/composition (*compare PECO* at 1074-1083 and at 1083-1090). *See also Dominion Nuclear Connecticut/Millstone Power Station,* Case No. 34-RC-1944, Decision and Direction of Election (2002 DDE) at 10 (once the *scope* of the unit is clear, the Board applies the same community of interest test in the utility industry to determine unit placement, as it applies in any other industry).

And, under those principles, once the Board finds that the petitioner has described, within the *scope* of the unit, an identifiable group of employees who share a community of interest, the burden then shifts to the employer that seeks to add employees into the unit, to prove that those additional employees share an overwhelming community of interest with petitioned-for employees. *See, e.g., Lundy Packing Co.,* 314 NLRB 1042, 1043 (1994).

STATEMENT OF THE CASE

The employer in this case is Dominion Nuclear Connecticut, Inc./Millstone Power Station ("DNC/Millstone"). DNC/Millstone is a wholly owned subsidiary of Dominion Resources, Inc. ("DRI" or "parent"), and DNC/Millstone's operations are overseen by Site Vice President Stephen Scace. Also working on site at Millstone are personnel in a number of

organizations that do not report directly to Scace, but instead report directly either to the parent DRI or to a separate subsidiary of the parent, Dominion Resources Services, Inc. ("DRS"), which provides services to all of the plants within DRI's Nuclear Business Unit, or "fleet." These organizations are described as "matrixed." Petitioner, International Brotherhood of Electrical Workers, Local 457, AFL-CIO ("IBEW") seeks to represent a physical production and maintenance (P&M) unit of the employer's employees. Petitioner defines the scope of the unit as all of the organizations reporting directly to DNC/Millstone Site Vice President Stephen Scace, and excluding the matrixed organizations.

In opposing the petition, the employer argued below that, under the public utility presumption, all organizations *on site* at Millstone, including the matrixed organizations, comprise the smallest appropriate unit. The employer also argued that, in addition to dictating unit *scope*, the public utility presumption also dictates unit *placement*. In this regard, the employer contended that every non-supervisory employee working on site at Millstone must be placed in the petitioned-for physical P&M unit for that unit to be appropriate.

Petitioner disputed both of the employer's arguments. First, petitioner argued that the public utility presumption favoring systemwide units does not apply in this case because the employer (a) is not "public" utility and (b) the employer's operations included only one facility, and thus there is no "system" to which the presumption can be applied. Petitioner also argued that the matrixed organizations should be excluded from the scope of the unit as organizations not paid and/or supervised by the employer.

As to the question of the composition of the unit, *i.e.*, the *placement* of particular employees within the P&M unit, petitioner argued that the public utility presumption does not encompass a presumption that *all* of the employer's non-supervisory employees belong in a

physical P&M unit. Instead, once the unit scope is determined, the Board returns to traditional community of interest principles to determine unit composition. Moreover, petitioner argued that Board has consistently found physical P&M units in the utility industry, to be presumptively appropriate.

The Regional Director's Ruling

The Regional Director ruled that the public utility presumption applies in this case. Instead of either of the units proposed by the parties, however, the Director found a smaller "administrative segment" appropriate. That unit included all of the groups with reporting obligations to the Plant Manager (who oversees only one of three Departments under Vice President Scace). In so ruling, the Regional Director excluded all but one of the matrixed groups, on the theory that they did not report, either directly or indirectly, to the Plant Manager.

In addition, the Regional Director accepted the employer's assertion that the public utility presumption also compels a "systemwide" or, in this case "segment-wide," unit *placement* approach. Accordingly, the Regional Director included every non-supervisory employee, excepting obvious professional, office clerical and managerial employees, in the physical P&M unit within the segment he found appropriate in scope.

The Board's Order

The parties raised essentially the same arguments in seeking review, and, in response, the Board ruled that the public utility standard for unit determination applies in this case. Consequently, the Board asked the parties to address whether the unit found appropriate by the Regional Director (*i.e.*, composed of groups with reporting only to the Plant Manager) or any unit other than the "plant-wide unit" proposed by the employer, constitutes a well-defined administrative segment and thus would be appropriate under the applicable unit determination

standard. The Board stated further that, in this regard, the parties should also address the application of *Oakwood Care Center*, 343 NLRB 659 (2004) to the inclusion of the matrixed employees within the unit found appropriate by the Regional Director or in any other unit.

Summary of Petitioner's Response

As stated, because the Regional Director applied the public utility presumption to both the question of unit *scope* and questions of unit *composition*/*placement*, the Board's solicitation of positions on the appropriate unit in this case requires answering two separate questions involving presumptions in the utility industry: first, what is the scope of the appropriate unit under the public utility presumption; and second, what standards apply to unit composition, *i.e.*, to the placement of employees in the physical P&M unit in the utility industry, regardless of the unit's scope.

Unit Scope

Neither party seeks a unit in scope that matches the unit found appropriate by the Regional Director, so petitioner will not address the appropriateness of that unit. The employer contends that the smallest appropriate unit scope in this case includes all of the organizations reporting to the Site Vice President and all of the organizations with reporting responsibilities to DRI or DRS. (In its Order, the Board referred to this unit as "plant-wide.") Petitioner contends that the *scope* of the appropriate unit under the public utility presumption is composed of all organizations under the direct supervision of Millstone Site Vice President Scace, and does not include the organizations working on site that report directly to DRI or DRS. Petitioner contends that this unit is appropriate in scope because it is the employer's "systemwide" unit. Alternatively, the grouping is appropriate as a well-defined administrative segment.[2]

[2] Because petitioner's positions are consistent with principles dictating unit scope in the utility industry, and because petitioner is not seeking to include operations or employees of joint employers in

Unit Placement

The employer and the Regional Director are in error when they insist that the public utility presumption also applies to questions of unit placement, or composition, and, therefore, dictates that all (or most) of an employer's non-supervisory employees must be included in an appropriate physical P&M unit, over the petitioner's objection. Instead, once the Board determines unit *scope* under the public utility presumption, it returns to traditional community of interest principles in examining questions of unit composition. *See, e.g., PECO Energy CO.*, 322 NLRB 1074 (1997). *See also Dominion Nuclear Connecticut/Millstone Power Station*, Case No. 34-RC-1944, Decision and Direction of Election (2002 DDE) at 10 (once the *scope* of the unit is clear, the Board applies the same community of interest test in the utility industry to determine unit placement, as it applies in any other industry).

And, as stated, under those principles, once the Board finds that the petitioner has described, within the *scope* of the unit, an identifiable group of employees who share a community of interest, the burden then shifts to the employer that seeks to add employees into the unit, to prove that those additional employees share an overwhelming community of interest with petitioned-for employees. *See, e.g., Lundy Packing Co.*, 314 NLRB 1042, 1043 (1994). *See also Specialty Healthcare and Rehabilitation Center*, 357 NLRB No. 83 (2011).[3]

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the same unit, petitioner no longer urges the Board to address whether or how the standards set forth in *Oakwood Care Center*, 343 NLRB 659 (2004), apply to this case.

[3] As explained in more detail, infra at Part Two (Unit Placement), petitioner does *not* argue that *Specialty Healthcare* applies to the determination of unit *scope* in this case: indeed, the public utility presumption is clearly an industry specific presumption that *Specialty Healthcare* is not intended to disturb. *See Specialty Healthcare*, slip op. at 13 n. 29. However, because the Board returns to traditional community of interest standards in determining unit *inclusions/composition* in the utility industry, petitioner asserts, and urges the Board to rule, that the traditional community of interest standards as explained in *Specialty Healthcare* do apply when establishing whether petitioner has defined *an* appropriate unit in terms of its *composition.*

Under those community of interest principles, as applied to questions of unit composition/placement, rather than unit *scope,* the Board should find that petitioner has described a readily identifiable group of physical P&M employees who share a community of interest. The Board should then also find that the employer has failed to meet its burden of proof that the employees it seeks to add to the P&M unit share an overwhelming community of interest with petitioned-for employees.

In Part One, petitioner will address the question of the appropriate scope of the unit, under the Board's rule that systemwide units are presumptively appropriate in the utility industry.

In Part Two, petitioner will explain that the physical P&M unit it seeks at Millstone, however defined in *scope*, is a presumptively appropriate physical production and maintenance (P&M) unit in its composition. The petitioner will further explain that the employer has failed to overcome that presumption in seeking to include specific employees and groups of employees in the physical P&M unit at issue, over the petitioner's objection.

PART ONE: UNIT SCOPE

I. STATEMENT OF FACTS[4]

A. The Employer

It is undisputed that the employer is Dominion Nuclear Connecticut, Inc. whose sole business is the ownership and operation of the Millstone Nuclear Power Station ("DNC/Millstone") in Waterford, Connecticut. (TR6,7,13,148,154-55) DNC/Millstone is incorporated in the State of Delaware. (E14 at1) The DNC/Millstone site comprises approximately 500 acres, the central focus of which is three nuclear reactors, only two of which (Units 2 and 3) are in operation. (TR 76, 154-55; P1)

DNC/Millstone's operations are under the direction of Site Vice President Stephen Scace. (TR 182) *See also* E4 (Scace is the "Millstone Site Vice President"). DNC/Millstone is in turn a wholly-owned subsidiary of Dominion Resources, Inc. ("DRI" or the "parent") (TR 143; 2002 DDE at 2). Accordingly, the complete organizational chart listing all of the organizations under Scace (P17) is headed "Dominion Resources, Inc." and Scace is described as the "Millstone Executive/Site Vice President." *See also* P17a (same).

As reflected on petitioner's exhibit 17 (*i.e.*, the organizational flow chart beginning with Scace and drilling down through all of the entities reporting to him), the heads of three department-level groups report directly to VP Scace: the Plant Manager (Nuclear), who oversees Nuclear Operations and Maintenance; the Director of Nuclear Safety and Licensing; and the Director of the Millstone Excellence Team. *See also* P17a.

The physical P&M employees the petitioner currently seeks to represent all work in organizations under Millstone Site Vice President Scace. The following employees work under

[4] Petitioner will set forth the facts relevant to unit scope in this Part, and those relevant to unit placement in Part Two.

the Plant Manager in the Nuclear Operations and Maintenance Department: Instrument Tech III, Lead Nuclear Fuel Handler, Nuclear Electrician II and III, Nuclear Instrument Tech T2 and T3, Nuclear Instrument Technician, Nuclear Maintenance Technician, Nuclear Mechanic I, II and III, Senior Nuclear Generation Test Services Tech, Senior Nuclear Instrument Tech, Nuclear Plant Equipment Operator, and Control Operator. The remainder work within a second department – Nuclear Safety and Licensing, under Director Richard MacManus. These are Health Physics Technicians, Senior Nuclear Chemistry Technicians, and Nuclear Chemistry Technicians. (P20) There are no physical P&M employees working in the third Department, under Director Stanley.[5]

B. The Employer's Parent and the Parent's Subsidiary Operations

As stated, DNC/Millstone is a wholly-owned subsidiary of DRI. (TR 143; 2002 DDE at 2). The parent DRI is an electric power generation and gas distribution company and is the fourth largest energy utility business in the nation (TR143), and its corporate headquarters are in Richmond, Virginia. (TR 117) In addition to Dominion CT/Millstone, the parent has numerous other subsidiary corporations, which are set forth in its most recent 10K report, as excerpted in P14.

The parent's structure includes a "Nuclear Business Unit" ("NBU") or nuclear "fleet," which includes DNC/Millstone, but also includes plants that are not part of DNC/Millstone: North Anna and Surry, both located in Virginia, and a non-operational nuclear plant in

[5] Also, petitioner originally sought to include two classifications who work in a matrixed organization -- Supply Chain: Stockhandler and Lead Stockhandler. (2014 DDE at 2, 22) (P-20) If the Board limits the *scope* of the unit to organizations under VP Scace, however, petitioner will not seek to include the Stockhandlers and Lead Stockhandlers in the approved bargaining unit as they do not work in any of those organizations. If, however, the Board approves the broader unit proposed by the employer, including all of the matrixed organizations, petitioner would seek to include the Stockhandlers and Lead Stockhandlers.

Wisconsin. (TR 91-92, 142-43, 144) The parent operates its NBU stations under the same "fleet procedures" that cover all aspects of nuclear plant operations, to ensure uniformity and compliance with industry expectations. (TR 144)[6]

Among parent's numerous subsidiary corporations, other than DNC/Millstone, is one that is particularly relevant to this case: Dominion Resources Services, Inc. ("DRS"), which is located in Glen Allen, VA at the Innsbrook Technical Center. (*See* www.dom.com/contact/directions-to-dominion-offices.jsp.). Unlike DNC/Millstone, which is incorporated in Delaware, DRS is incorporated in the Commonwealth of Virginia. (P14 at 3) The employer refers to DRS as a "sister company" (Employers' Opposition to Petitioner's Request for Review at 38), and acknowledges that both DNC/Millstone and DRS are subsidiaries of the parent DRI. *Id.* at 38) DRS is the DRI subsidiary that that provides certain services to the parent's entire nuclear fleet to preserve uniformity. (TR 142, 231, 3578, 4203-04)

C. "Matrixed" Organizations at the Millstone Site Do Not Report Directly to Millstone Site Vice President Scace

As the Regional Director found, some groups working at DNC/Millstone Power Station are not directly responsible to the employer, but are supervised and/or paid by either the parent DRI, *i.e.*, "corporate," or by the other separate subsidiary, DRS. (TR 116-117; 2014 DDE at 11) Petitioner's Exhibit 16, for example, is a list of classifications of employees working in matrixed groups who are *paid directly* by DRS, and not by the employer DNC/Millstone. (TR 6827)

[6] The two other operational sites in the parent's nuclear fleet – North Anna and Surry in Virginia, have union representation. Petitioner can represent that both sites have production and maintenance (P&M) bargaining units represented by another IBEW Local Union under the same contract. (See also 2002 DDE at 2, n.7.) Employer witness George Marshall, who came from North Anna, acknowledged in the hearing that the P&M unit there is similar to the unit petitioned-for here, and that the Nuclear Outage & Planning employees he supervises at Millstone (such as planners, schedulers, outage coordinators and outage specialists) are not included in the bargaining unit at North Anna. (TR 2020-2021)

Employer witnesses referred to this interrelation between DNC/Millstone and "corporate" and/or DRS as a "matrixed" relationship. They explained that a matrixed individual has a "dotted line" relationship with a Millstone supervisor, instead of a "solid" line relationship to a supervisor on site at Millstone. Instead, the matrixed group's solid, or "direct," line reporting is to "corporate." (TR 142, 182-83)[7] The direct reporting line indicates that the matrixed individual takes direction from and/or is paid by the parent or one of its subsidiary entities, other than DNC/Millstone. (P19)

The employer's witness on Information Technology (IT) personnel testified, for example, that IT is a "matrixed organization" in that its "reporting chain is to Innsbrook" (where DRS is located). IT personnel "support the [Millstone] station" but *work for* "corporate IT." (TR 2170-71) The witness subsequently identified "corporate IT" as Dominion Resources (TR 2171).

A "matrixed" or "dotted line" reporting relationship does not denote actual supervision by DNC/Millstone supervisors. For example, Luther Hahn of the IT organization has an on-site "dotted line" reporting relationship to Richard MacManus, the Director of Nuclear Safety & Licensing. (TR 2168; E5). MacManus, however, does not fill out Hahn's performance evaluation (TR 2186). IT Manager Paul Sucholet, who similarly has a dotted line reporting relationship to MacManus, testified that he meets with MacManus "not more than once a month." (TR 2332, 2434)

The Regional Director found that, with the exception of Engineering, these matrixed groups provide services that are ancillary to plant operations and maintenance. (2014 DDE at 11) And, in keeping with the NBU or fleet-wide approach, some personnel at Millstone working under DRS managers have work responsibilities to companies other than DNC/Millstone. For

[7] This "dotted line" relationship is evident on several organizational chart pages the employer introduced. See e.g., E4 (Millstone Site Vice President and Directors) and E5 (Millstone Power Station Nuclear Safety and Licensing Organization charts).

example, three of IT Manager Luther Hahn's four direct reports do not work exclusively for Millstone Station, but spend up to 25% of their time at other stations in the parent's NBU. (TR 2190-91) Moreover, *Hahn* supervises their work when they work at other sites. (TR 2191) Also, Michael Crouch, in the Supply Chain organization, also works for organizations that are not part of Millstone. (TR 6090) He does, for example, "inventory control for all of the [nuclear] sites," and creates "stock codes for other sites, the same as what he does for Millstone." (TR 6090) A supervisor in Virginia, who does Crouch's performance evaluation (TR 6089), assigns the outside work to Crouch. (TR 6090).

Further, the matrixed groups, in addition to having different leadership and supervision, also have an arms-length financial relationship with DNC/Millstone. For example, employer witnesses in the IT group described more of a vendor to client relationship with Millstone, than an employee/employer relationship. IT Manager Hahn describes himself as the "IT business account manager at Millstone" (TR 2082), and the "primary point of contact at Millstone Power Station for the business for any IT related matters." (TR 2083) He coordinates between "corporate" and Millstone; and these coordination duties include "fleet wide project[s]," that is, projects beyond DNC/Millstone. (TR 2083) Hahn repeatedly referred to other departments at Millstone as IT's "clients." (TR 2087, 2188, 2193, 2142, 2151) And, as stated, some of Hahn's direct reports also service "clients" at other nuclear plants within the employer's nuclear fleet. In addition, the IT help desk is not even onsite at Millstone; it's in Virginia. (TR 2737)

Moreover, the IT budget Hahn manages does not include employee salaries. Hahn testified that his budget does not support "the personnel salaries." (TR 2185)[8] Hahn also

[8] This admission regarding IT personnel salaries was followed by a confusing exchange between the hearing office and Hahn, in which Hahn appears to agree that the relationship between Hahn and Millstone is not a vendor-client relationship. But the only facts Hahn actually acknowledged are that his

explained that the time of the personnel in his department is charged to *corporate* code IT7000, and then passed on to Millstone (TR 2217), presumably, by corporate. This is consistent with the parties' stipulation that payment for the services of matrixed employees is "charged" to DNC/Millstone's budget by the parent, or relevant subsidiary of the parent. (P19)

D. The Subpoenaed Organizational Charts

Figuring out which groups are under site VP Scace, and which are directed by personnel reporting to corporate DRI or to separate subsidiary DRS, proved difficult as the hearing progressed, partially because the employer introduced isolated organizational chart pages, rather than a complete chart, throughout its case.[9] And these isolated charts did not reveal the chain (or chains) of command on site at Millstone.

On day 11 of the hearing, July 2, 2013, it became apparent to petitioner that certain individuals the employer was seeking to add to the bargaining unit, in the IT department in particular, were not actually employed by the employer, but were instead responsible to DRS, as set forth above. Consequently, petitioner requested the employer provide complete organizational charts that would reflect the IT employees' places within DRS. (TR 2171-2173)

In response to petitioner's subpoena for comprehensive organizational charts, the employer produced: (1) Petitioner's 17: a complete DNC/Millstone organizational flow chart beginning with the highest on-site official, Millstone Executive and Site Vice President Stephen E. Scace, and proceeding to the Directors under Scace, and then drilling down through all of the Director's groups, in a number-coordinated sequence; (2) Petitioner's 17a: a summary chart of

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budget includes a set of funds that he gets from Millstone that he uses at Millstone for hardware, but not for personnel. (TR 2168-69)

[9] See, e.g., E4, E5, E7, E26, E29, E38, E50 and E61, E53, E66, E67, E68, E74, E75, E76, E77, E78, E95-96, E115, E79 - E85, E87-89, E90-95; E97-100, E116-121, E 122-123, E128-131, E157, E132-133, E140, E144, E148, E149, E155-156, E151, E153, E166-168, E169.

the departments and organizations under Scace, again reflecting that the DNC/Millstone organization is composed of: (1) Vice President Scace; (2) the three Director-level Departments: Nuclear Station Operations and Maintenance under the Plant Manager, Nuclear Station Safety and Licensing; and the Millstone Excellence Team; and (3) Petitioner's 18: a grouping of different charts totaling 49 pages, showing various departments on site at Millstone, led by individuals that do not appear on petitioner's 17 or 17a and thus appear to have no direct reporting obligations to VP Scace.

The Hearing Officer expressly described this latter group of organizational charts as comprised of "those folks with operational and reporting connections to folks who work outside of Millstone." (TR 4099) The employer's attorney explained that there are people at the tops of these charts who are not Millstone people, "[t]hey're Dominion Resources Services people," and, when that occurs, that "we would consider that probably a Dominion Resources Services chart, org chart." (TR 6844)[10] As described below, the record establishes that the people at the top of the charts comprising P18 are either DRI or "Dominion Resources" people. In contrast, personnel appearing on P17 who identified their actual employer, stated that they are employed by Dominion Nuclear Connecticut. *See, e.g.,* (TR 5044-45) (Donald Heard, head of Nuclear Site Services (non-matrixed group)).

E. The "Matrixed" Organizations

1. Groups "Matrixed" to Safety & Licensing Department

The Director of Safety & Licensing at the time of the hearing was Rich MacManus. MacManus has a "solid line" reporting relationship to VP Scace. (E4, P17, P17a) Six of the ten

[10] Petitioner's counsel mistakenly referred to these three charts (E17, 17a and 18) as, collectively, "the organizational charts for Millstone Nuclear Power Station." (TR 6844) As the Hearing Officer clarified, however, with the Employer's agreement, the three charts cover "the people actually at the site." (TR 6844)

organizations on MacManus' department's isolated organization chart (E5) have only dotted line reporting obligations to him, and have direct reporting obligations to someone in "corporate:" Emergency Planning, Records Management, Access Control, Protection Services/Safety, Environmental and Information Technology. None of these six organizations appear listed on the site organizational flow chart under VP Scace. *See* P17 at 74-92. *All* of these organizations appear instead as part of P18.[11]

As MacManus explained, Access Control, one of these "dotted line" groups, is "matrixed independently out of [the] corporate office." (TR 231) This ensures that "there's a [nuclear] fleet approach." (TR 231)

Records Management is also part of a fleet group for Dominion Resources, headed by Glenn Roxy Gwynn of the Innsbruck Technical Center. Jeffrey Putnam, who supervises nuclear records at Millstone, is just one of four supervisors at DRI's "remote locations," which include the Surry and North Anna nuclear plants. (TR 4203-04; E135) That these Records personnel on site at Millstone receive paychecks from DNC/Millstone (TR 4204), is consistent with the fact that the cost of services performed by matrixed employees, even when paid directly by another company, is nonetheless charged to DNC/Millstone's budget by the parent or the relevant subsidiary of the parent. (P19)

The supervisor of the Environmental unit, Donald Landers, is employed by DRS, and reports to the Director of Electric Environmental Services, located in Glen Allen, Virginia, at the Innsbruck Technical Center. (TR 4459, 4462) Landers confirmed that all of the personnel he supervises (as listed on E 141) are paid by DRS, and all report directly to him.

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[11] *See* P18 at 46 (Emergency Planning), 45 (Access Control), 34-37 (Protection Services/Safety), and 21-24 (IT). Nuclear Procedures does not appear on either Chart.

2. Information Technology (IT)

The IT Department at Millstone, while nominally "matrixed" to MacManus' group, is part of the parent's centrally-located IT organization that supports all of the parent's nuclear stations (TR 2334), and which is, therefore, much bigger than Millstone Station. (TR 2335) DRS oversees all similar systems at all nuclear sites because the systems interact with each other. (TR 2335)

As Chief IT Manager on site, Luther Hahn, testified, "we *support* the station, but *we work for corporate IT*." (TR 2170-71) (Emphasis added) Hahn's paycheck is from "Dominion Resources Services" (TR 2184, 2217-18), as are the paychecks of the people who report to Hahn. (TR 2216) Hahn's direct (*i.e.*, "straight line") reporting relationship is with Patty Guinan, the Manager of Nuclear Accounts (TR 2169), who "would not appear on a Millstone chart," because she is out of Innsbrook, Virginia (TR 2168), where DRS is located. Paul Sucholet, Manager IT Process Systems, also acknowledged that he is employed by Dominion Resources Services, and reports to his superior, Tom Arruda, in Innsbrook. (TR 2329, 332)

3. Engineering

Director of Engineering Jeff Semancik was originally listed on the first page of the Millstone site chart, as a "dotted line" report to VP Scace. (E4) When the employer finally produced the DNC/Millstone organizational chart in flow chart format (P17), however, Semancik was not on it. The personnel under Semancik also disappeared from the Millstone flow chart. (P17) Instead, the Engineering Department appears at pages three to twelve of E18, as a stand-alone Department with reporting obligations outside of Millstone.

Semancik's direct boss, Gene Crecheck, is a Vice President of Engineering based out of Richmond. (TR 182) Engineering Manager Joseph Rigatti also testified that he is employed by

Dominion Resources Services (TR 1094). And Manager Debbie MacDonald confirmed that she is employed by "Dominion Resources," albeit "at Millstone Power Station." (TR 1094, 479)

Classifications in this Department are also among those that the employer has acknowledged are paid by DRS. (P16 and TR 6827)

4. Training

The training group manager, John Palmer, reports on a "dotted line" basis to the Plant Manager; Palmer reports directly, however, to Michael Crist, the Nuclear Training Manager in Glen Allen, Virginia, where DRS is located. (TR 4054-4056) And the Training group does not appear on P17 as reporting to the Plant Manager, but instead appears at pages 27-33 of P18 as a stand-alone group. As one employer witness confirmed, "training is an organization that reports up through a different chain." (TR 4055) In keeping with DRS' service to all plants in the NBU, the managers of training for the other operational nuclear fleet facilities (*e.g.,* North Anna and Surry) also report to Crist. (TR 3588-3586) In addition, all but two training procedures at Millstone are "fleet direct procedures." (TR 3587)

5. Supply Chain

Philip Clorite, Manager of Supply Chain Services, an organization that appears on P 18 at 25-26, but not on P17, reports to Steven Stanton in Virginia, a Manager of Supply Chain. (TR 5973)

There are also matrixes within the matrix in Supply Chain, as there are other personnel who report directly to supervisors in Virginia, separately from their dotted line reporting to Clorite. (TR 5975) For example, Michael Crouch, a Materials Specialist whom the employer seeks to include in the unit, also reports directly to a supervisor in Virginia -- Theresa Davis, Supervisor Inventory Analysis. (TR 5975, 5977; E169) Crouch, whose pay comes from

Millstone, actually works for organizations outside of Millstone. (TR 6090) He does, for example, "inventory control for all of the [nuclear] sites;" and Crouch also creates "stock codes for other sites, the same as what he does for Millstone." (TR 6090) The outside work is assigned to Crouch by Ms. Davis, in Virginia (TR 6090) and Davis does Crouch's performance evaluation. (TR6089)

6. State Affairs

Kevin Hennessy, the Director of Federal, State and Local Affairs for New England (TR 5262), an organization that appears on P18 at page 42, is part of DRS. (TR 5361-62)

7. Human Resources

Joseph Costa, a Human Resources "generalist," whose organization appears at pages 1 and 2 of P18, testified that he "physically" works at Millstone Power Station (TR 73), but reports to Human Resources Manager Ellen Fountain, who in turn reports to Human Resources Director Jack Risendal. (TR 116-117) Fountain and Risendal both work at "Corporate headquarters" in Virginia. (TR 117) The "Staffing group" with which Costa works is also at Corporate in Virginia. (TR 118) And the other Human Resources staff he works with at Millstone – the Human Resources representative and the other Human Resources generalist – are supervised by the Manager of Human Resources, who, as stated, works at corporate headquarters in Virginia. (TR 121-22)

8. Additional Matrixed Groups

In addition to the organizations set forth above, the following groups are not part of the organization headed by Stephen Scare, in that they do not appear under Scace on P17, but do

appear as part of E18: (1) Nuclear Oversight; (2) Employee Concerns Program; (3) Finance & Business Services; and (4) Community Relations.[12]

The Board may properly infer then, that P18 comprises personnel paid and/or supervised by "corporate," by either DRI or DRS.

II. ARGUMENT

A. Legal Standards

It is undisputed that the Board views systemwide units as optimal in the public utility industry, in order to avoid fragmentation of a system whose segments have a high degree of integration. *See PECO Energy Co., 322* NLRB 1074, 1079 (1997); and *Baltimore Gas & Electric Co.*, 206 NLRB 199 (1973). This preference for systemwide units has been described as an evidentiary presumption, which a petitioner can overcome by establishing that the scope of the unit sought constitutes a well-defined administrative segment of the employer's organization, such that the smaller unit would not unduly fragment the employer's operations. *PECO*, at 1079-80).

Thus, in *PECO*, the Board found that, while a unit comprising just one of the employer's two nuclear plants would not be appropriate, a grouping of the two plants which comprised the employer's nuclear generation group (NGG) was an appropriate administrative subdivision. In so ruling, the Board rejected PECO's argument that only a systemwide unit which included the utility's NGG nuclear plants *and* non-nuclear plants within its power generation group (PGG), and other business segments supporting the two groups, was appropriate in scope. *Id.* at 1076. In finding the two-plant NGG appropriate in *scope* because bargaining therein was feasible, the

[12] Organizational Effectiveness and the Excellence Team are inexplicably duplicated on both charts. Petitioner concludes that the groups actually belong on P17, the Millstone chart, because their Directors, Alan Bassham and Brandford Stanley have "solid line" relationships to supervision on the DRS/Millstone Chart (P17). *See* P17 at 1 (Stanley reports directly to the Site Vice President), and 74, 76 (Bassham reports directly to the Director of Nuclear Station Safety and Licensing.

Board noted that the NGG was headed by its own senior vice president, and that its supervisors, up to and including the senior vice president, had no authority over other PECO employees outside of the NGG. The Board also cited these additional factors, among others, in finding the NGG an appropriate administrative subdivision for bargaining: that the NGG operated as a separate entity financially; and that the NGG independently contracted with several of the employer's support groups for services performed at its nuclear plants, for which services or products received it must pay.

B. All of the Organizations Reporting Directly to the Millstone Site Vice President Comprise *an* Appropriate Unit in Scope

As stated, the petitioner contends that the *scope* of the appropriate unit under the public utility presumption includes all organizations under the direct supervision of DNC/Millstone Nuclear Station Site Vice President Stephen Scace, and does not include the organizations working on site that do not report directly to Scace, but instead report either to DRI, DNC/Millstone's parent company, or to DRI's separate subsidiary DRS, which provides services to all of the plants within DRI's NBU. This unit is appropriate in scope because it *is* the "system" and thus the same in scope as a systemwide unit. Alternatively, the grouping is appropriate as a defined administrative segment.

1. DNC/Millstone Operations Under Site Vice President Scace Comprise the Employer's *System* and thus are Identical in Scope to a Systemwide Unit

The organizations reporting directly to DNC/Millstone Executive and Site Vice President Stephen Scace comprise the only systemwide unit possible in this case, for the simple reason that the *only* facility the employer DNC/Millstone operates is the Millstone Nuclear Station. That station is under the direction of its own Vice President, and is operated and maintained by

employees in the groups reporting directly to that Vice President, as set forth on the site organizational flow chart, P17.

The other, matrixed, organizations on site at Millstone are not part of DNC/Millstone's "system." These organizations are headed by individuals who are employed either by DNC/Millstone's parent company DRI, or by the separate subsidiary DRS, which services all of the DRI's nuclear plants. There is no other explanation for the absence of the "matrixed" organizations from the flow chart P17, other than that they are *not* part of DNC/Millstone's "system," although they work on site and provide services to organizations within that system. Thus, the organizations directly under Site Vice President Scace *are* the systemwide unit, rather than the hybrid unit the employer proposes, which includes the matrixed groups and thus extends beyond either the system or the plant.[13]

DNC/Millstone is separately incorporated from DRI or DRS, in the State of Delaware, and is charged with operating a single facility, the Millstone Nuclear Station. The matrixed groups, in contrast, are under either (1) DRI, Millstone's parent company, which is the fourth largest energy utility business in the country, incorporated in the Commonwealth of Virginia, or (2) one of the parent DRI's numerous other subsidiaries, DRS, which is also separately incorporated in Virginia. While the parent DRI operates, and the separate subsidiary DRS services, other nuclear power plants in the NBU, those plants are not sited in Connecticut and are not even allegedly integrated with DNC/Millstone.

Indeed, personnel working in the matrixed groups are not under the site Vice President's direct supervision; some even perform work at other DRI facilities; and DNC/Millstone and DRS appears to have separate budgets, and something of a client/service provider relationship. And there is no testimony that any of the personnel under Scace (as listed on P17) are responsible to

[13] In its Order, the Board refers to the employer's preferred unit as "plant-wide."

any supervisors or managers in any of the matrixed organizations. Nor is there evidence that employees in the matrixed organizations, who report up through a chain of command to their DRI or DRS supervisors or managers, are under the direct supervision of anyone under VP Scace. Consequently, the employees under Scace (P17) and the employees in the matrixed organizations (P18) do not constitute a *systemwide* unit.

Instead, the only cohesive system at the Millstone site is composed of the organizations directly under Site Executive Vice President Scace. Including the matrixed groups, with their obligations to other corporations and other facilities, would create a unit at Millstone consisting of parts of other corporations grafted onto the DNC/Millstone organization. This would result in an intermural fragmentation of separate subsidiaries of the parent, which cannot serve the purposes of the public industry presumption.[14]

2. Alternatively, the Organizations Reporting Directly to the Site Vice President Comprise a Well-Defined Administrative Segment

If the Board agrees with the employer that all of the organizations working on site at Millstone constitute a systemwide unit, in a "plant-wide" grouping,[15] then petitioner argues, in the alternative, that the organizations reporting directly to Site Vice President Scace constitute a well-defined administrative segment of that unit.

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[14] Moreover, it is not even clear how a systemwide unit including the matrixed organizations would be properly defined. If personnel in the matrixed organizations report to supervisors and managers who are in turn employed by and/or supervised by and or/paid by other companies, and in some cases also work at other, non-Millstone sites, how can they be part of the employer DNC/Millstone? The matrixed organizations are responsible either to DRS and/or to the parent DRI. So who would be the "employer" whose operations encompass all of these matrixed and non-matrixed organizations? Indeed, if DRI is the employer, or even the joint employer, then aren't the P&M employees at Millstone more properly accreted to the bargaining units at the two other nuclear plants in DRI's Nuclear Business Unit -- North Anna and Surry? As stated, those bargaining units are similar in composition to the unit sought in the instant case, and are represented by a single IBEW Local Union under a single contract.

[15] *See, supra*, n. 13.

The same factors discussed above similarly support a finding that a separate grouping under the Site Vice President is a well-defined administrative segment of the "plant-wide" group the employer seeks. First, as in *PECO*, Millstone/DNC, is operated by its own Vice President, as a subsidiary of DRI, has its own budget and has to reimburse DRS for any personnel salaries DRS pays directly to its own personnel. Thus it can reasonably be inferred that DNC/Millstone contracts with DRS for services of these personnel. Indeed, the IT personnel refer to organizations on site at Millstone as their "clients." At a minimum, the two organizations engage in some arms' length financial transactions. Moreover, as stated, none of the employees in the organizations reporting up through supervisors or managers under Vice President Scace (P17) have any reporting obligations to any personnel on P18. Thus, there is no evidence that employees in the two groups share supervision.

That the matrixed organizations are affiliated with other companies, or segments, subordinate to the parent DRI, means the organizations can be excluded from the *scope* of the unit, even if the employees in the matrixed organizations do spend all or most of their time at Millstone. *See PECO Energy Co.*, 322 NLRB at 1080-81, and n. 2 (excluding from the scope of well-defined administrative subdivisions NGG and PGG, employees affiliated with other strategic business units or other components of the employer's business, regardless whether they spent most of their time at stations within the administrative subdivisions).

PART TWO: UNIT PLACEMENT

I. THE PETITIONED-FOR UNIT IS *AN* APPROPRIATE PHYSICAL PRODUCTION AND MAINTENANCE UNIT

Regardless of the *scope* of the P&M unit, the Board must still answer the question whether the public utility presumption compels the inclusion in the physical P&M unit of every statutorily appropriate classification and employee in the employer's operations.

The employer asserted below that the public utility presumption, in addition to dictating the *scope* of the unit, also dictates unit *composition*, and thus compels including in the physical P&M unit every employee on site who is not a manager or supervisor. The Regional Director did not go quite as far, but still interpreted the utility industry presumption to compel the inclusion in the physical P&M unit of every employee that was not otherwise excludable as a professional, office clerical or managerial employee. For example, the Regional Director found that substantial factors weighed *against* finding that Nuclear Schedulers shared a community of interest with employees in the petitioned-for physical P&M unit. He nonetheless included the Schedulers in the unit, primarily because the Schedulers work in a department that is part of the administrative segment the Regional Director had found appropriate. (2014 DDE at 41-42)[16] Thus, the Regional Director was under the misapprehension that, in the utility industry, when assessing unit placement (or composition) issues, normal community of interest standards do not apply.

This is simply not accurate, however. The Board applies its public utility presumption only to questions of unit *scope*, *i.e.*, to the question of which *facilities* or *operations* of the utility

[16] The Regional Director also expressly cited employment in the same administrative segment as weighing in favor of including other employees in the physical P&M unit, including: Nuclear Workweek Coordinators (DDE at 46-47), Outage Coordinators (DDE 49-50); Nuclear Outage Specialists (DDE 51); Nuclear Technical Specialists III (DDE at 53); Contract Services Coordinators (DDE 79-80); and Vehicle Management Specialist (DDE 84-85).

belong in the systemwide unit, or in an appropriate administrative segment thereof. *See, e.g.*, *PECO Energy Co.,* 322 NLRB 1074 (1997) (the employer's nuclear generation group, comprising two separate nuclear power plants comprised a unit appropriate in scope); *Alyeska Pipeline Service Co.*, 348 NLRB 779 (2006) (both stations of the employer's pipeline operations must be included in an appropriate unit); and *Baltimore Gas & Electric*, 206 NLRB 199, 199 (1973) (a petitioner could not carve out a unit comprising a nuclear power plant when the utility at issue included eight other electrical generation plants, as well as transmission and distribution operations).

Once the Board determines the scope of unit under the utility industry presumption, however, the Board returns to traditional community of interest concepts to determine unit placement (composition) issues. *See PECO Energy Co.*, 322 NLRB 1074, 1081 n. 2 (1997) (expressly distinguishing questions of systemwide scope from questions of unit composition). *See also Dominion Nuclear Connecticut/Millstone Power Station,* Case No. 34-RC-1944, Decision and Direction of Election (2002 DDE) at 10; and *Constellation Power Source Generation, Inc.*, Decision and Direction of Election, 2000 NLRB LEXIS 942, at *273-277 (Nov. 17, 2000). Consequently, the Board has never applied the public industry presumption in a manner that compelled the placement into a physical P&M unit of every employee of the employer, regardless whether the scope of unit was systemwide or some administrative subdivision thereof. Put another way, the Board has never presumed that *all employees of a public utility* shared a community of interest such that they must all be included in the same bargaining unit.

Moreover, such a holding would clash directly with another long-held presumption, which is that production and maintenance (P&M) units are themselves presumptively

appropriate, including P&M units in the utility industry. *PECO*, 322 NNLRB at 1081, n. 2. *See also Constellation Power Source*, 2000 NLRB Lexis 942, *234. Moreover, P&M units in the utility industry, as in the instant case, have historically been described as "physical." *Constellation Power Source*, at *234 (and cases cited therein). *See also Sierra Pacific Power Co.*, 56 NLRB 458, 461 (1944) (physical or production and maintenance employees of a utility company can best be represented in a separate unit, apart from clerical employees and other employees).

In summary, regardless of the *scope* of the P&M unit the Board determines appropriate in this case under the public industry presumption, the Board must treat matters of unit inclusion and exclusion (*i.e.*, unit *placement*, or *composition*) in accordance with traditional community of interest principles.

A. Standards for Determining the Composition of an Appropriate Physical P&M Unit

As the Board explained in *Lundy Packing*, a petitioned-for P&M unit need only be *an* appropriate unit, and the unit sought by the petitioner is always a relevant consideration. 314 NLRB at 1042.

In *Lundy Packing*, the Board examined whether certain quality assurance/lab technicians had to be included, as the employer insisted, in a petitioned-for unit of P&M employees in the employer's meat processing plants. The Board agreed that the disputed technicians did share enough similarities to the petitioned-for unit employees that a unit including them might also have been appropriate, had petitioners sought such a unit. However, in rejecting their inclusion, the Board expressly stated that the technicians did not share "such an *overwhelming* community of interest with the petitioned-for production and maintenance employees as to mandate their

inclusion in the unit despite the Petitioner's objection." 314 NLRB at 1043-44. (Emphasis added.)

This is the same analysis clarified by the Board in *Specialty Healthcare & Rehabilitation Center*, 357 NLRB No. 83 (Aug. 26, 2011), for determining what constitutes *an* appropriate unit and what showing an employer must prove when it seeks to add employees to an appropriate unit. Indeed, the Board in *Specialty Healthcare* relied in part on *Lundy Packing* when it described the employer's burden as a "heightened" one, that is, a showing that the included and excluded employees share an *overwhelming* community of interest. 357 NLRB No. 83, slip op. at 11.

Petitioner acknowledges that *Specialty Healthcare* does not apply to the *scope* of unit determination in this case. Indeed, the public industry presumption is a specific industry which *Specialty Healthcare* "is not intended to disturb." Slip op. at 13 n. 29. However, *Specialty Healthcare* does apply in this case to questions of the appropriate *composition* of the physical P&M unit, because, as explained, once unit scope is established under the public utility presumption, the Board returns to traditional community of interest principles in determining unit placement. *See, e.g., PECO*, 322 NLRB at 1074-1082 (determining appropriate scope of the bargaining units), and at 1082-1090 (determining unit placement issues). *See also Dominion Nuclear Connecticut/Millstone Power Station*, Case No.34-RC-1944, Decision and Direction of Election (2002), slip op. at 10.

In *Specialty Healthcare*, the Board explained that a proposed unit is *an* appropriate unit for bargaining when it "describes employees readily identifiable as a group and when consideration of the traditional factors demonstrates that the employees share a community of interest." 357 NLRB No. 83, slip op. at 11. As in *Lundy Packing*, the Board also explained that

the employer cannot add employees to the unit simply by showing that the disputed employees also share a community of interest with included employees. Instead, in order to add employees to the unit, the employer must meet a heightened showing and prove "that the employees in the larger unit share an *overwhelming* community of interest with those in the petitioned-for unit." *Id.*, slip op. at 12-13. *See also Kindred Nursing Centers East, LLC. v. NLRB*, 2013 U.S. App. Lexis 16919, at *21-27 (6th Cir. August 15, 2013) (approving and enforcing the standards set forth in *Specialty Healthcare).*

And, as the Board also explained in *Specialty Healthcare,* an "*overwhelming* community of interest" exists only when the community of interest factors "overlap almost completely." 357 NLRB No. 83, slip op. at 11 (approving same statement made by the Court of Appeals for the District of Columbia Circuit, in *Blue Man Las Vegas, LLC v. NLRB,* 529 F.3d 417, 421-22 (D.C. Cir. 2008)). *See also Fraser Engineering Co., Inc.,* 359 NLRB No. 80, slip op. at 1 (March 20, 2013). And, in *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB No. 163, slip op. at 3 (Dec. 30, 2011), the Board expressly rejected the argument that different rules apply to technical employees at a nuclear facility.

In other words, the employer must prove that there is "no legitimate basis on which the additional employees can be excluded." *Specialty Healthcare,* slip op. at 11-13. In *Guide Dogs for the Blind,* 359 NLRB No. 151, slip op. at 7 (July 3, 2013), the Board expressed the standard as one under which the employer has to demonstrate that the similarities are sufficient to "blur the pronounced differences that exist between the interests of the petitioned-for" employees and the "other employees the employer seeks to include." And the Board has found that the employer met this standard, for example, where the union petitioned for a unit that included all employees *except* one classification. *See Odwalla, Inc.,* 357 NLRB No. 132, slip op. at 5 (Dec.

9, 2011) (the union sought an inappropriate, fractured unit, because there was "no rational basis" on which to exclude only the merchandizers).

Thus, whatever the *scope* of the appropriate unit, if the Board finds that the petitioned-for physical P&M unit in this case describes employees, within that scope, who are "readily identifiable as a group, who share a community of interest" the Board must find the unit appropriate as to *composition*. The employer then can add employees to that unit only if there is no legitimate basis on which they can be excluded.

As set forth below, the petitioned-for physical P&M unit describes a readily identifiable group that shares a community of interest.[17]

B. The Petitioned-for Physical P&M Unit Describes Employees Readily Identifiable as a Group and Who Share a Community of Interest

Petitioner is seeking a bargaining unit composed of all of the physical production and maintenance (P&M) employees employed within the scope of the unit found appropriate. Such a unit is appropriate in composition because it is comprised of employees who are "clearly identifiable as a group who share…a community of interest." *Specialty Healthcare*, 357 NLRB No. 83, slip op. at 8 (Aug. 26, 2011). With only one exception, the composition of this unit would be the same regardless of the scope of the unit the Board determines is appropriate.[18]

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[17] In evaluating community of interest, the Board considers whether the employees in the petitioned for-unit: (1) are organized into a separate department; (2) have distinct skills and training; (3) have distinct job functions and perform distinct work; (4) are functionally integrated with the employer's other employees; (5) have frequent contact with other employees; (6) interchange with other employees; (7) have distinct terms and conditions of employment; and (8) are separately supervised. *United Operations, Inc.*, 338 NLRB 123, 123 (2002). The Board also considers (9) the *extent of organization*, *i.e.*, the petitioned-for unit itself. *NLRB v. Metropolitan Life Insurance Co.*, 380 U.S. 438 (1965).

[18] Thus, as stated, if the Board limits the scope of the unit to the organization reporting directly to site Vice President Steven Scace, petitioner would not seek to include Stockhandlers and Senior Stockhandlers who are not under Scace, but who work in the "matrixed" Supply Chain organization. If, however, the Board determines that the smallest appropriate unit includes the matrixed organizations, Petitioner would seek to include the Stockhandlers, etc., as they are physical employees typically included in physical P&M units. *See* discussion below at Section B.4.

As is typical in a P&M unit in the utility industry, the employees in the petitioned-for P&M unit are production and maintenance employees, who perform *physical* work in an industrial environment, with industrial tools, under non-office type conditions, and share similar terms and conditions of employment, such as dress, salary and bonus ranges, non-exempt status under the Fair Labor Standards Act ("FLSA"), and restrictions on work hours under the Nuclear Regulatory Commission's ("NRC's") fatigue rules for nuclear power plant work.[19]

Thus, the petitioned-for unit consists of physical production and maintenance employees in two of the three Departments under Vice President Scace. Within the Nuclear Operations and Maintenance Department (under the Plant Manager), petitioner seeks to include the following classifications: Nuclear Mechanic I, II and III, Nuclear Instrument Technician T2 and T3, Instrument Technician III, Senior Nuclear Instrument Technician, Nuclear Maintenance Technician, Nuclear Electrician II and III, and Senior Nuclear Generation Tests Services Technician, Nuclear Plant Equipment Operator, Control Operator, and Lead Nuclear Fuel Handler. Within the Safety & Licensing Department, specifically in the Radiation Protection and Chemistry group, petitioner seeks employees in these classifications: Health Physics Technician, Nuclear Chemistry Technician, and Senior Nuclear Chemistry Technician. (P 20)[20]

As employer witness Michael O'Connor acknowledged, the personnel in the petitioned-for maintenance and operations classifications, as well as the Chemistry Technicians and Health Physics Technicians, are the "hands-on," "physical" people involved with the safe production of

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[19] Regulations promulgated by the Nuclear Regulatory Commission (NRC) limit the hours certain employees at nuclear power plants can work in an effort to avoid critical mistakes caused by worker fatigue. *See* 10 C.F. R. § 26, Subpart I, Managing Fatigue.

[20] *See* n. 3, above (regarding the inclusion or exclusion of Stockhandlers and Senior Stockhandlers).

power at Millstone (TR 6808). They are also "covered workers" under the NRC's rules and the employer's standards implementing those rules. (TR 6808)[21]

1. Nuclear Maintenance Department

a. Nuclear Mechanic I, II and III

Nuclear Mechanics I, II, and III (Mechanics), are the basic, advanced and most advanced levels of the same position, in a job progression. (*See* E102, E 101, and E86) Mechanics at the basic level perform mechanical work in the inspection, repair, testing, adjustment, installation and removal of nuclear power plant equipment, such as turbines, heat exchangers, pumps, fans, and rotating equipment. (E102) At the second level, Mechanics may also rig and lift major components such as pumps and motors, and dispose of hazardous waste. (E 101; TR 5855-87) At the top level, Mechanics perform all necessary diagnostic and repair actions. (E 86) Mechanics use hand tools and power tools, including wrenches, saws, cutting and grabbing tools, and pneumatic tools, and operate engine driven machines such as forklifts. (TR 5786) They work in a dangerous environment. (TR 5751) All three positions require a high school diploma or GED, and all Mechanics must be able to use mechanical/power tools. (E102, 101, and 86) The work is "physical" work (TR 5746), and all Mechanics must maintain the physical requirements for the job. (E102, 101, and 86) They typically wear jeans and long-sleeve shirts,

[21] Also, while many employer witnesses were vague on which employees are "covered workers" under the NRC fatigue rules and which are not, there is ample evidence in the record that *all* classifications in the petitioner-for unit are "covered workers" under the employer's program (P7; TR 246, 248) and the NRC's fatigue rules. *See, e.g.*, TR 249, 6266 (Control Operator); TR 250, 5681, 6266, 6424 (Nuclear Plant Equipment Operator); TR 6702 (Health Physics Technicians); TR 6266, 6570-71, 6638, 6646-47 (Lead Nuclear Fuel Handler, covered 365 days a year as "Operator"); TR 5912, 6266, (Nuclear Chemistry Technicians and Senior Nuclear Chemistry Technicians); TR 249, 5912-15 (Nuclear Electricians II and III); TR 249-50, 6266, 6288, 6290, (Senior Nuclear Instrument Technician, Nuclear Instrument Technician, and Nuclear Instrument Technicians T2 and T3 – "I&C Techs"); TR 6266 (Nuclear Maintenance Technician); TR 250, 5788, 6266, (Nuclear Mechanics I, II, and III); TR 250, 6345, 6349, 6266, P12 (Senior Nuclear Generation Test Services Tech); and TR 249 (Instrument Technician III).

and have coveralls available for really dirty jobs. (TR5753) They do not wear business casual. (TR5753) They have access to locker rooms with showers, which they use because they can get "really dirty." (TR 5798) They also use the locker room to change into "modesty garments" to wear under Personal protective Equipment ("PPE") when they have to go into the auxiliary building. (TR 5798) Mechanics wear dosimeters to monitor the radiation doses they receive. (TR 5829) Mistakes they, and other physical workers, such as "electricians, I&C techs and operations personnel," make could "trip" the plant. (TR 5776)

Because they maintain equipment inside the Power Block,[22] Mechanics work primarily inside the Block. (TR 5737, 5739) They must be qualified, and maintain their qualifications, under QAP and ANSI Standards (E 102, 101, 86), on specific components. (TR 5755) They must maintain a list of their current qualifications (*see, e.g.,* P8), and the list must be checked for current status before they can go into the Block and perform any job requiring the specific qualifications. (TR 5667-69) Mechanics are covered employees under the NRC work fatigue rules. (TR 6809; TR 5797) They are non-exempt employees and are eligible for an 8.5% bonus. (E65; TR 5792)

Mechanics have on-the-job contact with other petitioned-for unit classifications. (TR 5806, 5833 (Chem Techs and Control Operators) in the Turbine Building and locker rooms).

b. Nuclear Maintenance Technicians

Similar to Nuclear Mechanics, Nuclear Maintenance Technicians (Maintenance Techs) work under supervisors in Nuclear Maintenance. (P 17 at 22 and 24)

[22] The Power Block is an industrial setting in which all of the main components for containing and controlling the nuclear reactors are housed and/or located. (TR 5448-49, 5881, 6329, 6557, 6664, 6699) It includes the containment buildings, turbine buildings, control buildings, auxiliary buildings, emergency diesel enclosures, intake structures, fuel buildings, waste buildings, and hydrogen recombiner buildings, steam valve buildings, and service buildings. (TR 5450; 5864-65, 6155, 6562)

Maintenance Techs maintain and repair air-operated or motor-operated valves. (E 108) The position requires significant experience as a Nuclear Mechanic III, Nuclear Electrician III, or Nuclear Instrument Technician. *Id.* Maintenance Techs must maintain enclosed volume, radiation worker and SERO Qualifications. They are "covered workers" under the NRC fatigue rules. (TR 6809) They are also non-exempt workers (E 108) and are eligible for an 8.5% incentive bonus. (E 65)

c. Nuclear Electricians I, II, and III

The Nuclear Electrician (Electrician) job series comprises Levels I, II and III. The levels reflect different levels of competency and experiences, but the job scope is the same. (TR 5866) These Electricians perform electrical work activities associated with the construction, installation and maintenance of electrical equipment and plant systems. (*Id.;* TR 5863*)* They install control and switchboard wiring and equipment; they operate and maintain complicated electrical equipment. (*Id.*) The preferred educational background for the positions is a high school degree or GED. (*Id.*) The Electricians must be able to meet the "physical" job requirements (as this is "physical" work (TR 5885)) and must maintain a series of qualifications to support of the needs of the plant. (*Id*.; TR 5874) This involves initial training of approximately one year (TR 5877), as well as two weeks of continuing training each year. (TR 5879)

Electricians work inside the Power Block. For example, the turbine building includes large fan and pump motors, circuit breakers and station batteries that Electricians maintain, test, repair and replace as needed. (TR 5869) Electricians also test and maintain a series of breakers in the auxiliary building. (TR 5870) In the fuel building, Electricians work on motors, and test and repair "Heat race" wires. (TR 5872) Within the intake structures, Electricians perform testing and maintenance on motor starters, service water pumps and heaters. (TR 5872-73)

During outages, Electricians enter the containment structures themselves to maintain, repair and swap out the large fan motors that aid air and water circulation to cool the fuel rods. (TR 5873) The Control Building itself houses vital switch gear, such as 4000 volt circuit breakers, that electricians spend a lot of time testing and maintaining. (TR 5874) They utilize the following tools: screwdrivers, pliers, wrenches, wire strippers, diagonal cutters, crimpers, battery drills, and portable band saws. (TR 5958-59, 5969)

When not in the plant itself, Electricians spend time in the electrical shop, which is a cinder-blocked, hard-tiled area with tool cabinets, and butcher block surface with Plexiglas tops used as work surfaces/"desks." (TR 5935-37, 5945, 5958, 5950)

Electricians are "covered employees" under the NRC work fatigue rules. (TR 6809; *see also* TR 5912-15, 5913, 6809) They are non-exempt employees, eligible for an 8.5% bonus. (TR 5983, 5987-88; E 65) They typically wear jeans and work shirts (TR 5882), and are "physical workers in the field getting dirty every day." (TR 4772)

In addition to basic PPE, Electricians also wear "electrical flash gear" (a protective suit with a face mask) when necessary, to protect them from arc flashes. (TR 5883) They work ten hour days, from 6:30 a.m. to 4:30 p.m. (16:30) (TR 5890), and have access to lockers in Building 317, where they keep clean clothes and often shower before going home for the day. (TR 5912-13)

d. Nuclear Instrument Technicians

Several classifications of employees who inspect, maintain and repair Plant sensors come under the broad rubric "I&C Technician." These classifications include Nuclear Instrument Technician, Nuclear Instrument Technician T2, Nuclear Instrument Technician T3, and Senior Nuclear Instrument Technician, and Instrument Technicians II and III. (TR 428 3285-87; E104,

105, 106 and 107) Except when making specific distinctions, petitioner will refer to these approximately 40 employees (P20) collectively as "I&C Techs".

I&C Techs monitor and maintain the Power Block sensors that provide feedback to Operations personnel (Plant Equipment Operators ("PEOs") and Control Operators ("Cos")). (TR 6166) These sensors are also called "transmitters" and measure plant conditions, such as temperature, flow, level, and pressure. The information provided then enables Operations personnel to manipulate controls. (TR 6166) The I&C Techs use wrenches, screwdrivers, hammers, and electronic testing equipment. (TR 6174) If they do not do their work correctly, they can trip the Plant. (TR 6261-62)

There is an I&C shop in service building 317, where I&C Techs keep their tools and have workbenches (2-inch butcher block work surfaces), computers and telephones. (TR 6208-09) The shop also contains a "closet-like" room, with a table and six chairs, occasionally used for pre-job briefings. (TR 6214-15) The I&C shop is noisy because it is next to the turbine; consequently, 15-20 minute morning meetings are held in Building 437. (TR 6241)

I&C Techs go through an initial training program, and then undergo several years of on-the-job training before they are qualified to work on their own, although, at Millstone, these technicians always work with a partner. (TR 6167, 6260) They also undergo annual "continuing training" with other maintenance classifications. (TR 6169) Petitioner's Exhibit 9 is an example of current qualifications maintained by an I&C Tech. (TR 6175-79)

I&C Techs are "covered workers under the NRC's fatigue rules." (TR 6809; see also 6288-90) This status is confirmed for them on a daily basis by the "EMP Center" – a computer tool used to track covered employees' hours and determine their eligibility to work. (TR 6183-84) Petitioner's Exhibit 10, an example of a recent EMP printout for an I&C Tech (TR 6184-

6186), shows the worker's covered status in the "Admin" block, where it states "EE-Covered." (TR 6185; P10)

I&C Techs wear jeans, T-shirts, and steel-toed shoes to work (TR 6178), and add the usual PPE when working inside the Power Block. (TR 6178) They have access to locker rooms inside the Power Block (TR 6179), and work ten-hour days, Monday through Thursday, from 6:30 a.m. to 4:30 p.m. (TR 6170) I&C Techs are hourly workers, eligible for an 8.5% incentive bonus. (E65; TR 6198)

e. Senior Nuclear Generation Test Services Technician and Instrument Technicians III

The Generation Test Services Technician job progression includes both the Senior Nuclear Generation Test Services Technician classification and the Instrument Technician III classification, which is the step below GTS Tech. (TR 3403-04; E103, E111) Petitioner will refer to these classifications jointly, as "GTS Techs." GTS Techs calibrate and repair a variety of complex electrical equipment in the power plant, such as relays, meters, timers, transducers, transformers and other motors. (TR 6297) E111 at 1) They also perform surveillance on "under voltage protection" to ensure that the plant doesn't trip when the voltage drops. (TR 6305) If they do not perform their jobs correctly, GTS Techs can trip the plant. (TR 6533)

GTS Techs receive initial training at the Training facilities, which is then followed by on-the-job training. (TR 6307) Each year, they receive a week of "continuous training," one day of which is given in common with I&C Techs, Mechanics and Fuel handlers. (TR 6307-08) They maintain qualifications in a variety of electrical and mechanical disciplines. (TR 6309-11; P11) GTS Techs use a variety of hand tools, such as screwdrivers, wrenches and sockets. (TR 6327) They wear jeans, t-shirts and work shoes; when in the field they put on long sleeved shirts. (TR 6331-32) They have access to locker facilities. (TR 5912, 6332)

GTS Techs work Monday through Thursday, 6:30 a.m. to 4:30 p.m. (TR 6320) They are covered workers under the NRC fatigue rules (TR 6345-46, 6348, 6349) They are hourly workers, and are eligible for an incentive bonus of 8.5%. (TR 6357-60)

2. Nuclear Operations

The operations of the nuclear power plant itself have to be overseen twenty-four hours a day, seven days a week. Consequently, many of the operations personnel work on rotating shifts. (TR 5491)

a. Plant Equipment Operators

As Plant Equipment Operator (PEO) Matthew O'Neill testified, PEOs are "the eyes and ears of the plant in the Power Block." (TR 5446) After participating in a turnover from their counterpart on the previous shift (TR 6427, 6467), PEOs spend the first few hours of each shift touring their assigned portion of the plant, looking for abnormalities in plant equipment and obtaining readings from meters and gauges, such as temperature gauges. (TR 5466, 6427) These procedures are called operator "rounds," and the plant is so large that there are four different areas in which rounds are performed on each operating unit. (TR 5466, 6426) During rounds, PEOs may operate valves, start pumps, and drain oil. (TR 6428) The remainder of the workday, PEOs perform surveillance testing of plant equipment and safety tagging procedures. (TR 5446, 5467, 6429) All of this work takes place within the Power Block. (TR 6434) PEOs also function as fire brigade members and leaders when acting as emergency response personnel. (TR 5467)

PEOs undergo initial training for a period of about five months, and then spend another year of on-the-job training and demonstrations of proficiency to become fully qualified. (TR

5469-70, 6449-51) PEOs then continue to attend four days of training, every five weeks. (TR 5469-70, 6452) They perform physical work, wearing PPE. (TR 5473)

PEOs typically wear jeans to work, because work inside the Power Block requires "durable clothes such as denim" that won't be easily ripped and can withstand the rust, grease and dust the workers are exposed to. (TR 5493-4) They are supposed to wear one form of an "approved" shirt, either a maroon polo shirt, a blue Oxford shirt, or a denim shirt with a Dominion logo on it. (TR 5493, 6432) They use the following tools: pipe wrenches, valve drills, valve "bones," small motor devices, hand-cranking tools and ladders. (TR 5702, 5705) When on rounds, they also use a hand-held electronic device to record the readings they are taking. (TR 5719-20) In addition to the usual PPE, they occasionally wear electrically insulated suits. (TR 5701-02, 6532)

PEOs are non-exempt hourly workers, and are eligible for an 8.5% bonus. (TR 5506, 6453-55; E65) Operations has its own designated lockers, showers and changing rooms, which the PEOs use after dirty jobs. (TR 5508, 6435) Management considers PEOs to be "covered workers" under the NRC's fatigue rules. (TR 6809; see also TR 5518; P7) They work "rotating shifts," which means that they rotate between day and night shifts in different blocks of days. (TR 6423) During outages they work four days on, one off. (TR 6508)

b. Control Operators

Control Operators (COs) are responsible for performing work associated with starting, operating, and shutting down of the reactor, auxiliary reactor systems, main steam turbines, generator and auxiliary turbine generator equipment in the Power Block. (E 27) COs read and interpret dials, gauges, recorders, signal lights, and audio signals to determine plant operating

conditions and take action accordingly; they also take switching orders and perform switching/tagging operations on unit electrical systems/switchyard equipment as required. (*Id.)*

COs work inside the Power Block, in the Control Room, which is a 20-25 foot, glassed-in oval. (TR 5835) When working as COs, they are required to wear a uniform of sorts -- khaki pants and a maroon collared shirt -- to distinguish them from the Senior Control Operators, who are the supervisors in the Control Room. They work on shift, and are subject to the NRC work fatigue rules as covered workers. (TR 6809) COs are non-exempt employees and are eligible for an annual bonus of 8.5%. (E65) COs are required to have a high school degree or equivalent GED, and experience as a PEO. (E27) They must maintain a Reactor Operators license and qualifications as required by the ANSI standards. (E 27)

Control Operators also retain their qualifications as PEOs, and it is not uncommon for COs to perform as PEOs. (TR 6444-45; 6805) When more than two COs are on a shift that only requires two, the third CO will be out in the plant performing a PEO function. (TR 6645-46) COs are typically included in physical P&M units in the public utility industry, if not otherwise found to be supervisors *See, e.g., PECO,* 322 NLRB at 1083 (voting the COs subject to challenge due to their alleged supervisory status); *Arizona Public Service Co.,* 310 NLRB 477, 480-81 (1993) (COs are not supervisors and are appropriately included in the P&M unit at the nuclear power station); and *Exelon Generation Co.,* Case No. 4-RC-20940 (Decision and Direction of Election, slip op. at 18-20 (March 23, 2005) (same). No one contends in the instant case, however, that the COs are supervisors.

c. Lead Nuclear Fuel Handler

Lead Nuclear Fuel Handlers (Lead Fuel Handlers) work in Millstone Operations Support, under the Coordinator of Nuclear Operations Support. (P 17 at 38) These employees have the

rather difficult and dangerous job of being responsible for safe handling of all of the nuclear fuel on site. (P13 at 1) While the position requires only a high school degree or GED in formal education, the Lead Fuel Handlers are expected to have a solid background in Operations and refueling outages. (P13 at 2) They perform work in the spent fuel pools, operate refueling and fuel handling equipment, and function as shift leads for reactor vessel disassembly and reassembly and for all nuclear fuel movement during refueling outages. (*Id.* at 1) Needless to say, they perform their job duties within the Power Block (TR 6557), where they spend 90-95% of their time inside the RCA.[23] (TR 6573) When disassembling and reassembling the reactor, the Lead Fuel Handlers actually go down into the reactor cavities and use heavy hydraulic wrenches to loosen the studs, and then disconnect the pipes that carry the water that cools the reactor. (TR 6561) They use lift rigs and operate cranes during these procedures. They actually drive the cranes into the reactor pool and remove the spent fuel, which they then transport to the spent fuel pools. (TR 6561) Because the employer also stores its spent fuel on site, Lead Fuel Handlers are later responsible for loading spent fuel into casks, using 125 ton cranes to move the fuel to a decontamination area, and using a heavy hauler to take the spent fuel to a concrete bunker for on-site storage. (TR 6566)

During non-outage periods, the Lead Fuel Handlers accept shipments of new fuel, offload the fuel from the trucks, un-package it and insert it into a pool. (TR 6565) They assemble and repair tools used in fuel handling, perform surveillance on cranes, and work in the spent fuel pools, surveilling and moving fuel or "insert shields" from sections of fuel. (TR 6567-68) During these periods, Lead Fuel Handlers use wrenches, sockets, ratchets, hammers, sledge hammers, razor knives, screw drivers, pliers, chain hoists, slings and shackles. (TR 6568) The tools are kept inside the contaminated area to minimize risk of contaminating the outside area.

[23] RCA refers to Radiological Controlled Area.

(TR 6569-70) Warehouse 9 also has an area where contaminated tools are kept, and Lead Fuel Handlers interact with HP Techs in that building to get particular tools released for work in contaminated areas. (TR 6644)

Initial training for Lead Fuel Handlers consists of maintenance fundamentals (week-long class). They become qualified on various tasks, such as spent fuel pool handling and reactor core fuel handling, through on the job training. (TR 6587) Lead Fuels Handlers also cross-train with mechanics, electricians and I&C Technicians. (TR 6590)

Lead Fuel Handlers are covered workers under the NRC's fatigue rules, as are Operators. (TR 6569-70) They work ten hours each day from Monday through Thursday, from 6:30 a.m. to 4:30 p.m. (TR 6569) They use the locker facilities inside the protected area. (TR 6593)

3. Radiological Protection and Chemistry

a. Health Physics Technicians

Health Physics Technicians (HP Techs) (also called Radiation Protection (RP) Techs) work inside the Power Block (TR 6663), provide radiological protection for employees during routine and special plant maintenance operations, and inspect, calibrate and maintain radiological protection equipment. (E34) They work in Unit 2 and 3 auxiliary buildings, containments, and turbine buildings. (TR 6664)

The HP Techs are the "gatekeepers" of the RCAs. (TR 6667). Before employees assigned to work in those areas can access them, they must be cleared by an HP Tech, who gives them their radiation work permits (RWPs), and provides them with the information they need to enter the building. (TR 6667) The following classifications come to the HP Techs' office, a "fishbowl" area (TR 6676), on a daily basis: PEOs, Fuel Handlers, Mechanics, Electricians, GTS Techs, Nuclear Maintenance Techs, I&C Techs, and Chemistry Technicians. (TR 6573, 6676,

6679-81, 6684-86, 6687) The "fishbowl" is in Unit 2, inside the Power Block (TR 6718), and has glass on all three sides, an "L" shaped countertop bolted to a wall, a couple of sliding vertical windows, and a couple of computers. (TR 6717) The HP Techs have workstations with computers, but are not solely assigned to any particular station. (TR 6718)

HP Techs take "smears" directly at the work sites, to determine whether there is any loose surface contamination in the area. (TR 6668) HP Techs also take air samples as needed, for example, if the workers will be opening a valve. (TR 6668) HP Techs perform these surveys on daily, weekly, monthly and quarterly bases. (TR 6668)

The tools HP Techs employ are: radiation detection monitors, "friskers," air sampling equipment and "smears" (round disks used to take represented samples looking for surface contamination). (TR 6668-69) Radiation detection monitors include both a hand-held device and a "Geiger Mullier," which is on a pole that extends 13 feet for checking doses on overhead pipes. (TR 6669) The HP Techs also use radiation monitors to draw air samples from the containment structure itself, inside the auxiliary buildings. (TR 6670)

The HP Techs work a "rotating shift" schedule (TR 6690), which consists of a twelve-hour shift, worked for four days, followed by seven days off, then three days on. (TR 6697) They may also work a non-rotating shift, which consists of a ten-hour hour shift, Monday through Thursday, which begins at 6 a.m. (TR 6697) In addition to opening the "gate" for workers, the HP Techs also provide "job coverage," that is, they accompany the workers into the RCA on 80% of all jobs, and provide "one-on-one" assistance to the workgroup. (TR 6670-71, 6677, 6742) During these one-on-ones, the HP Techs monitor for radiation and set up shielding as required, creating a "bullpen" that has only one way in and one way out, with a "step off" pad.

(TR 6671) The HP Techs perform similar duties during outages, but the "intensity is ramped up." (TR 6672)

HP Techs must maintain task-specific qualifications, in an annual two-week training session. (TR 6673-74, 6740) They typically wear any type of shirt to work, (TR 6701), and wear steel toed shoes in the Power Block (TR 6683), that is, they dress similarly to PEOs. (TR 6440) HP Techs participate in the morning briefings for PEOs and COs in the Control Room. (TR 6513-14)

HP Techs are "covered workers" under NRC fatigue rules, except, on occasion, for those who work regular shift 4/10 schedule in Site Organization. (TR 6701 -02) They are hourly workers, eligible for an 8.5% bonus. (TR 6702-03). When an HP Tech's salary exceeds the upper limit on E65, it is due to overtime worked, rather than a higher rate or base salary. (TR 6704)[24]

[24] Some of the HP Techs at issue work in different groups, but all appear to perform the same work under similar conditions. For example, Bridget Beck and Thomas Gleason work in a separate group called "Exposure Control and Instrumentation." Beck and Gleason have an office in area known as the "Condensate Polishing Facility," but come to the Power Block on a daily basis to check the other HP Techs' instrumentation. (TR 6706-07, 6723-24) When they need to make repairs (which is typically on large pieces of equipment (TR 6729), Beck and Gleason can be in the Power Block, in the RCAs, for any amount of time from a half an hour to several days in a row, all day long. (TR 6729). Beck and Gleason can repair smaller pieces of equipment, such as survey meters, in their own RCA area. (TR 6729) Nick Hunter, who works as part of Health Physics, reports to Building 437, but comes into the Power Block on a weekly basis. (TR 6807)

Susan Garcia works in an RCA in the warehouse, near the MRRF Building (TR 6709), which is next to the Unit 2 Maintenance shop. (TR 6711, 6735) Dawn Goergen works for "Site Health Physics" in either Warehouse 9 or the MRRF (RCAs (TR 6725) where radioactive material is processed for shipment (TR 6710)), as does Cliff Marlow and Jan Drzewianowski. (TR 6709-10) Danny Gorby works in a separate group called Radiation Analysis & Material Control" (P17 at 89, 90), which is in the shipping area: he is in the Power Block on a weekly basis walking down jobs inside the RCA. (TR 6708, 6724) Also, both the HP warehouse and MRRF buildings are RCAs. (TR 6709, 6725). Mike Hyde presently works in the RCA in Unit 1, which would be considered part of the Power Block if Unit 1 were operational. (TR 6709, 6725) Goergen, Garcia, Hyde, Drzewianowski (and, presumably, Marlow), perform the same work as other HP Techs, just it in a different area. (TR 6725-26)

HP (or RP) Techs are appropriately included in a P&M unit at a nuclear power plant. *See, e.g., Entergy Operations, Inc.,* Case 15-RC-121665 (Decision and Direction of Election), slip op. at 17-21 (March 17, 2014), *Request for Review denied* (April 15, 2014).

b. Chemistry Technicians and Senior Nuclear Chemistry Technicians

The Nuclear Chemistry Technicians and Senior Nuclear Chemistry Technicians (Chem Techs) collect samples and preform analyses in certain locations on a regular schedule as required by both Federal and Connecticut law. With the exception of condensate polishing work, which is performed only by the Seniors, the Chem Techs all perform the same work. (TR 1418-21, 1422). The condensate polishing facility work also involves component manipulation. (TR 1421).

Chem Techs go into the RCAs on a daily basis to take samples of the reactor coolant system to establish parameters of what substances have dissolved in the liquid, and add chemicals to the "out-take," discharging water. (TR 6681, 6683) They open valves to obtain samples of the reactor coolant system water. (TR 6580, 6681-82) Specifically, they go underneath a piece of equipment with a catch basin, open the valve, collect a water sample, close the valve, put the component back into services, and then take the liquid to their lab for testing. (TR 6195)

While performing these functions, Chem Techs wear PPE, such as hardhats, safety glasses, rubber gloves, and lab coats. (TR 6195, 6682) They wear jeans to work and then change into "Oryx," a disposable form of hospital-type scrubs, also called a "modesty garment," which they then wear under their PPE in the Power Block. (TR 6682) They, of course, use the locker rooms. (TR 5797, 6196) When they add containers of chemicals to the coolant water, they wear head-to-toe "Hazmat" suits, with face shields and hoods and booties. (TR 6683)

They utilize some of the same tools as HP Techs, such as R-02 meters to take and read dose rates. (TR 6739) Like HP Techs, Chem Techs also participate in the morning briefings for PEOs. (TR 6513). They test water before Lead Fuel Handlers can work in the pools to move fuel. (TR 6579)

Chem Techs interact with Plant Equipment Operators and Control Operators "all the time" and deal with maintenance "very frequently." (TR 1422-23; 5902-03). For example, Chem Techs assigned to backwash a charcoal chemical filter work with (1) Control Operators who have to give the okay to perform the work, (2) a Plant Equipment Operator to manipulate the component to change it from automatic to manual and then back again after the filter is backwashed, and (3) a Health Physics Technician because the water could be contaminated. (TR 1423-29) Nuclear Operations Maintenance Advisor Randy Parrette provided another example: when a Nuclear Plant Equipment Operator assigned to monitor the radiation waste systems needs to vent gas from a system to relieve pressure, he works with the on-shift Chem Tech to take samples and to obtain the required discharge permit. (TR 1280-82)

Only a few of the Chem Techs have their own desks. All the *disputed* classifications in the Chemistry Department, however, do have their own desks. (TR 1463-64). Chem Techs are hourly employees, eligible for an 8.5% bonus. (E65)

Chem Techs are appropriately included in a physical P&M unit at a nuclear power plant. *See, e.g., Entergy Operations,* slip op. at 17-26.

4. Summary

It is obvious that the petitioned-for unit describes an identifiable group of employees, that is, physical production and maintenance workers, who also share a close community of interest. They perform physical work in dangerous, dirty, industrial environments, utilize hand tools

and/or heavy machinery, and wear protective clothing. They share locker rooms where they can change into protective clothing and clean up at the end of the day. All petitioned-for employees work chiefly inside the Power Block, are essential employees in the process of keeping the plant operational, and are, consequently, "covered employees" under the NRC fatigue rules. All employees, with the exception of COs who wear uniforms, wear work clothes, rather than business casual, and are all non-exempt employees under the FLSA and qualify only for the employer's lowest bonus percentage – 8.5%. There is no previous bargaining history and no union seeks to represent these employees in a broader unit.

II. THE EMPLOYER FAILED TO MEET ITS BURDEN OF PROOF THAT THE EMPLOYEES IT SEEKS TO ADD SHARE AN OVEWHELMING COMMUNITY OF INTEREST WITH EMPLOYEES IN THE PEITIONED-FOR PHYSICAL PRODUCTION AND MAINTENANCE UNIT

Even within the *scope* of the unit he found appropriate, the Regional Director failed to analyze the classifications of employees the employer proposed to add to the physical P&M unit under the appropriate standards. Instead**,** the Regional Director adopted the employer's argument that the public utility unit *scope* presumption also dictated questions of unit inclusions and exclusions, *i.e.*, questions of unit *placement*. Consequently, he failed to apply the appropriate community of interest analysis when examining whether specific classifications *must* be included in an appropriate P&M unit.

As explained above at Section I, however, the Regional Director should have examined the employer's proposed inclusions under traditional community of interest principles governing unit composition, *i.e.*, unit *placement.* Once the Board has determined that a P&M unit is an appropriate unit in composition, the employer cannot compel the inclusion of additional classifications on the grounds that a unit including them is also appropriate, unless the employer proves that the additional employees share an *overwhelming* community of interest with included

employees. *Lundy Packing Co.*, 314 NLRB 1042, 1044 (1994). *See also Specialty Healthcare*, slip op. at 11. In other words, the employer must prove that there is no legitimate basis on which to exclude its proposed additions from an appropriate P&M unit. *Id.* Placing this burden of proof on the employer is particularly appropriate where, as here, physical P&M units are presumptively appropriate.

As demonstrated above, the petitioned-for unit describes employees readily identifiable as a group who share a community of interest. And the employer has not met its burden of proof that its proposed additions share an overwhelming community of interest with the employees in the petitioned-for unit, because the employees it seeks to add are not "physical" employees who work regularly within the Power Block, use tools, get dirty, wear protective clothing on a daily basis, share locker rooms where they can clean up at the end of the day, are subject to the NRC's work fatigue rules (*i.e.,* "covered employees"), and are hourly employees under the FLSA.

As stated, petitioner contends that the organizations reporting directly to Site Vice President Steven Scace constitute an appropriate unit in scope under the public utility presumption. In the following sections, petitioner will demonstrate that the employer has failed to meet its burden of proving that its proposed additions, within that unit, share an overwhelming community of interest with employees in the petitioned-for P&M unit.

Consistent with the scope of the unit petitioner contends is an appropriate unit in scope, petitioner will discuss the employer's proposed additions to classifications in the organizations under Site Vice President Scace: in the Nuclear Operations & Maintenance Department in Section I, and in the Nuclear Station Safety and Licensing in Section II. Neither party seeks to include any classifications in the third Department under VP Scace: the Millstone Excellence Team. Because the election petition in this case was filed approximately 15 months ago, if the

Board defines the scope of unit as petitioner requests, petitioner further asks that the Board rule on the inclusion or exclusion of the following classifications, rather than remand the case to the Regional Director, in order to avoid additional delay.

A. Nuclear Operations and Maintenance Department

1. Nuclear Maintenance

a. Nuclear Maintenance Specialist (NMS) David Phaneuf NMS David Phaneuf is the Preventative Maintenance Program *Administrator* (TR 3098-99). He meets weekly with engineers, managers, and planners, and arranges and coordinates the work of a vendor. (TR 3103-05) NMSs are overtime exempt (E65 at2); and are in the top, 15.00%, bonus tier. (E65 at 2) Phaneuf interacts with managers, engineers, work planners and vendors and *not* with employees in the petitioned-for P&M unit. He performs different job functions using different skills than they do, and has different benefits. And there is no temporary interchange with employees in the petitioned-for unit.

Relying on *PECO Energy Co.,* 322 NLRB 1074, 1088 (1997), where the Board included technical assistants in a P&M unit, the Regional Director included Phaneuf in unit at issue stating that his work is functionally integrated with that of the maintenance employees. (2014 DDE at 69-70) The Regional Director's reliance on *PECO* is misplaced, however. In *PECO,* unlike the instant case, the union had included some technical employees in the petitioned-for P&M unit, and the Board, accordingly, analyzed the disputed technicals on the basis of their community of interest with the already included *technical* employees. Here, the petitioner does not seek to include any technical employees, and, therefore, the community of interest analysis must focus on employees in the physical P&M unit. In addition, the facts here are significantly different than those relied on in *PECO*. There ¸ the Technical Assistants the Board included in the unit, unlike

here, spent a third of their time in the protected area of the plant and shared the same pay and personnel policies as the employees in the petitioned-for unit.

As to the Regional Director's "functional integration" finding, recent Board decisions indicate that, even where the employer's facility is "functionally integrated," the degree of integration is not compelling where "each classification has a separate role," and this separation of roles results in only limited contact with the classifications within the petitioned-for unit. *See, e.g., DTG Operations, Inc.,* 357 NLRB No. 175 (Dec. 30, 2011) (although the employer's rental service agents worked towards the employer's overall business goal of renting cars, and the operations were thus "functionally integrated", the rental service agents were not functionally integrated with *other employees* where they performed a separate function from the other groups and had only limited interaction with them); *Guide Dogs for the Blind,* 359 NLRB No. 151, slip op. at 6 (July 3, 2013) (even though all employees worked toward the overall goal of caring for and training service dogs, the Board rejected a claim of functional integration, because "each classification has a separate role in the process"); and *United Operations, Inc.,* 338 NLRB 123, 125-26 (Sept. 30, 2002) (two different groups of maintenance technicians were not "functionally integrated" where they answered different types of service calls requiring different skill levels, even though they worked jointly on service calls once a week on average). Here, the NMS's clearly has an administrative role that is separate from the roles of physical P&M employees.

In summary, the employer has failed to meet its burden of ptoving that the NMS shares an overwhelming community of interest with employees in the petitioned-for unit.

b. Nuclear Technical Specialists (NTS) NTS Frederick Meehan "is primarily responsible for overseeing a vendor that disassembles, repairs, and reassembles the turbines and generators in Units 2 and 3…." (*Id.*; TR 3114-15) The Regional Director found that

"Meehan works primarily with contractors." (2014 DDE at 70) The NTSs are not covered by the NRC Fatigue Rules, do not regularly interact with P&M employees, are overtime exempt (TR 5529, 5789-90; E 65, p.2), and are in the higher, 12.50% bonus tier. (E 65, p.2) Meehan does not, therefore, share an overwhelming community of interest with petitioned-for P&M employees.

c. Nuclear Engineer III (NE III) and Nuclear Maintenance Specialist (NMS) Serving as Maintenance Department Corrective Action Coordinators The NE III and NMS are quasi-managerial.[25] They perform oversight and corrective action regarding the work of the petitioned-for employees and write reports; they do not perform P&M work (TR 2922-24, 2927; 2014 DDE at 66). They spend the vast majority of their time at their desks in an office building (TR 2942-43, 2958, 6182, 6302), and interact almost exclusively with supervisors (TR 2940, 2942-43, 2953-54, 2961). (TR 2964) They work five 8-hour days, Monday – Friday, wear business casual attire (TR 2957, 2962), are not covered by the NRC Fatigue Rules, are overtime exempt (TR 2950, 2951, 2957, 5525-26; E 65, p.2), and are in a higher, 12.50%, bonus tier. (TR 2950, 2951; E 65, p.2) Accordingly, they do not share an overwhelming community of interest with petitioned-for P&M employees.

d. Maintenance Coordinator (MC) The Regional Director included MC Jerry Picardi in the unit based on his finding that "Picardi's work is an integral part of the maintenance process …." (2014 DDE at 63) As explained above, however, in the discussion of the Nuclear Maintenance Specialists, functional integration is not established where the disputed employee performs a separate role from petitioned-for employees, and does not appear to have regular contact with them. Here, Picardi's role is clearly separate from the functions of the physical

[25] The NE III, Karen Carberry, was excluded from the unit in 2002 as a quasi-managerial employee (2002 DDE at 26).

P&M employees. He "controls" the assets in a huge warehouse and the budget used to supplement the material in it, is responsible for *purchasing* equipment and works closely with supervisors when they need specialized equipment. (TR 3406-07) Picardi also has an office in Building 434 and a computer station and phone in the warehouse. *Id.* And the other MCs function in the same way. (TR 3406-07) These MCs do not share an overwhelming community of interest with petitioned-for P&M employees. They do not perform physical P&M work; they work a straight 4/10s schedule, 6:30 to 4:30, Monday - Thursday (TR 5237); are overtime exempt; and are in a higher, 12.50% bonus tier. (E 65) The MCs are managerial or quasi-managerial employees with different skills, job functions, and terms of employment from the P&M unit.

e. **SR Controls Specialist (SRCS)** The SRCS is overtime exempt and is in the higher, 12.50% bonus tier (E65)than employees in the petitioned-for unit. The employer did not present any testimony showing any community of interest between the SRCSs and the P&M workers, and, therefore, failed to prove an that the SRCS shares an overwhelming community of interest with them.

f. Unit Outage Coordinator (UOC) The UOCs should be excluded as supervisors. Maintenance Manager Conant testified that Maintenance Supervisor Reigles who serves as the UOC is a qualified supervisor. (TR 3164-65) I&C Supervisor Hughes testified "all the coordinators are also supervisors." (TR 3321) Regardless whether these employees are supervisors, however, the employer failed to prove that they share an overwhelming community of interest with petitioned-for P&M employees.

2. Nuclear Operations

a. Nuclear Technical Specialist III (NTS III) The Regional Director included NTS IIIs who work in three different groups: Shift Operations; the Operations Maintenance Advisor Group; and Operations Support.

NTS IIIs in Shift Operations work as Shift Technical Advisors (STA). (2014 DDE at.27-32) STAs were added to nuclear plants after the Three Mile Island accident to independently oversee and assess plant response and provide advice. STAs must have an engineering degree. (*Id*. at 28)

NTS IIIs in Operations Maintenance perform only planning in a planning group that does not perform any physical P&M work. (*Id.* at 33, 35)

NTS IIIs in Operations Support handle corrective actions and process improvement assignments – clearly oversight and not physical P&M work. One of the NTS IIIs in this group sometimes works as an STA, and other times as the Human Performance Coordinator. (*Id.* at 37)

Thus, NTS IIIs perform oversight rather than physical P&M work. Engineers and TS IIIs are used interchangeably at Millstone. (TR 1066-67, 1300, 1762-64) Engineers have been excluded as professionals in this case, with the Board's approval. *See* 2014 DDE at 30, 38 n.27, 82; and Order, Aug. 1, 2014 at n.1)

The Regional Director found the NTS IIIs are technical employees. As such, they cannot be included in the union over petitioner's objection, particularly where the union is not seeking other technical employees, unless they share the requisite community of interest with petitioned-for P&M employees, rather than with *other technical employees*. *See, e.g., Weldun International, Inc.,* 321 NLRB 733, 753 (1996); and *PECO Energy Co.*, 322 NLRB 1074, 1085). And petitioner is *not* seeking to include other technical employees.

Moreover, these technical employees do not share an overwhelming community of interest with the petitioned-for P&M employees: they work in an office setting in office cubicles (TR 1257);[26] have little contact with P&M employees (TR 1263-64, 1271); are assigned to oversight and support tasks and not physical P&M work (TR 963, 1710-64, 963-975); are not covered by NRC Fatigue Rules; are overtime exempt; and are in a higher 12.50% bonus tier. (TR 5529, 5789-90; E65)

3. Nuclear Site Services

The Regional Director excluded three Nuclear Engineers III as professional employees and the Administrative Assistant III as an office clerical employee in the Nuclear Site Services Department (Site Services). (DDE at 81-82; 88). The Board has denied the Employer's Request for Review as to these classifications. The Board should similarly exclude the remaining classifications because they do not share an overwhelming community of interest with the petitioned-for unit.

Broadly, Site Services is responsible for construction, maintenance, and modification activities for the non-Power Block buildings at the site. (TR 4928) Site Services also handles non-Power Block roads, sewers, electrical distribution, the water system, and the motor pool. (TR 4928) Site Services primarily performs this work using contract employees provided by Day & Zimmerman. (TR 4928-29)

a. Senior Nuclear Construction Specialists and Nuclear Construction Specialist (Specialists) The Regional Director included the Specialists, finding that they share a community of interest with the P&M unit because "their jobs concern a maintenance function." 2014 DDE at 76. He noted, however, that they "do *not* perform physical maintenance work

[26] The one exception is a Nuclear Technical Specialist III who is assigned to Unit 1 and works in the Unit 1 maintenance building, Building 103. (TR 1254-55).

themselves and [they] primarily oversee contractors . . . ." *Id.* (Emphasis added.) The Specialists should be excluded because they do not share an overwhelming community of interest with petitioned-for physical P&M employees. Thus, they do not perform NRC "covered work" (TR 4821-22), and they do not share common immediate supervision (E148; E149; E151), work location (TR 4716), duties (E150, TR 4806), or dress code (TR 4771-72) with the P&M employees. Moreover, they are exempt employees who are compensated at a rate well-above that of the unit employees. (TR E65) In 2002, the Regional Director excluded the Senior Nuclear Construction Specialists because (1) they perform duties akin to an engineering function and support function and do not perform traditional P&M functions, and (2) "they interface far more regularly with engineers, supervisors, and [contract] craft employees than with Unit employees." 2002 DDE at 33. Their duties have not changed since 2002, and the Nuclear Construction Specialist performs the same type of duties. (TR 4722-27, 4956-57, 4844-45; E150; TR 4806, 4808, 4839, 4841, 4956-57, 4764-65, 4732; TR 4724-27, 4764-65, 4732, 4956-57, 4806, 4808, 4839, 4841)

b. Senior Nuclear Planners and Nuclear Planners (Planners) The Regional Director included the Planners, finding that they are functionally integrated with the petitioned-for unit, and that they have frequent contact with unit employees. 2014 DDE at 78-79. However, as stated, functional integration is not compelling where the employees at issue perform a separate function from the other groups and have only limited interaction with them. *See, e.g., DTG Operations, Inc.*, 357 NLRB No. 175 (Dec. 30, 2011).

And that is precisely the situation here. The Planners are primarily responsible for assembling work orders, procuring materials for a job, and entering project information into MAXIMO. (TR 4728, 4818, 4937) Planners primarily interact with other employees in Site

Services, such as engineers, and other Planners. (TR 4768, 4937-39) The Planners do not perform covered work under the NRC regulations (TR 4821-22), and they do not share common immediate supervision (E148; E149; E151; E155; E156), work location (TR 4716, 4800, 4810, 4820, 4866, 4998), duties (TR 4818, 4876-77, 5016), or dress code (TR 4771-72, 4828, 4918) with the petitioned-for P&M employees. Moreover, as to interaction and contact, there is only vague testimony that Planners may have contact with certain P&M personnel during "walk downs," but there is no specific testimony regarding the nature or duration of this contact. (TR 4768, 4940-41)

c. Vehicle Maintenance Specialist (VMS) The Regional Director included the VMS in the unit because he works in the administrative segment found appropriate by the Regional Director, and because he supports the maintenance function. 2014 DDE at 85. In 2002, however, the Regional Director correctly excluded the VMS from the unit because he was not involved in the daily production and maintenance process, he had separate immediate supervision, and he had no work-related contact with Unit employees. 2002 DDE at 100. The VMS's duties have not changed since 2002. (TR 4881, 4906; E154) He does not perform NRC "covered work," he does not share common immediate supervision (E148; E153), work location (TR 4866), duties (E154; TR 4881), or dress code (TR 4918) with the petitioned-for P&M employees. Moreover, he is an exempt employee who falls within the 10.00 annual incentive tier. (E65) The employer has, therefore, failed to prove that the VMS must be included in the petitioned-for unit.

d. Senior Nuclear Designers (Designers) The Regional Director included the Senior Nuclear Designers in the unit, finding that their work is functionally integrated with the work of the P&M unit. 2014 DDE at 83-84. The Designers, however, perform a different

function form the petitioned-for P&M employees, and they do not have any meaningful contact with P&M employees. (TR 4891-93, 4902) *See* discussion above at Section II.A.1.a. regarding "functional integration." In addition, the Designers do not perform NRC "covered work" (TR 4821-22); and they do not share common immediate supervision (E148; E153), work location (TR 4866), duties (TR 4876-77), or dress code (TR 4918) with the P&M employees. Moreover, Designers are typically excluded from physical P&M units. *See, e.g.*, *Maryland Cup Corp*., 171 NLRB 367, 369 (1968).

e. **Coordinator Contract Services II (Coordinators)** Despite finding that the Coordinators do not have any contact with P&M unit employees, the Regional Director included them in the unit because they work in the same administrative segment as other unit employees, they perform a maintenance function, and they share second-level supervision with some mechanics. 2014 DDE at 80. As stated, working in the same administrative segment is not a unit placement criterion. Moreover, the Coordinators do not share a compelling community of interest with physical P&M employees. They do not perform NRC covered work (TR 4821-22), and they do not share common immediate supervision (E148; E151), work location (TR 4800, 4804, 4816), duties (E152; TR 4797-98, 4802), or dress code (TR 4828) with P&M employees. Furthermore, they are exempt employees who fall within the higher 10.00 % annual incentive tier (E65), and they do not have any significant work-related contact with P&M employees (TR 4832-33, 4799, 4835-36, 4803-04, 4813, 4826). For these reasons, the Coordinator Contract Services IIs were excluded in 2002 (*see* 2002 DDE 31-32),[27] and they should similarly be excluded here.

[27] They were classified as Nuclear Facilities Coordinators in 2002, but their duties are the same.

f. Nuclear Technical Specialist III (Tech Specialist) The Regional Director included the Tech Specialist, finding that she shares a sufficient community of interest with the unit employees, despite the fact that she has different terms and conditions of employment from them. 2014 DDE at 86. The record shows that the Tech Specialist spends approximately sixty percent of her time on the duties associated with her role as the Department's Corrective Action Coordinator. (TR 4984, 4986) In this capacity, she monitors assignments in the Department, making sure they are completed on time. (TR 4985) Her area of expertise is human performance, not production and maintenance. (TR 5056) She also works with the excluded Financial and Business Services Group (6855-56) to perform budget analysis (TR 4985, 5043-45), she coordinates the in-processing for contract employees during outages (TR 4989), and she acts as her supervisor's "Little General." (TR 4989) These duties render her a quasi-managerial employee. She should be excluded from the unit on that basis. Moreover, whatever her status, it is clear that she lacks an overwhelming community of interest with the petitioned-for physical P&M unit employees: she performs different tasks, does not share common immediate supervision (E148), work location (TR 4997), or duties (TR 4984-85, 4989) with them.

4. Outage and Planning Department

a. Sr. Nuclear Schedulers & Nuclear Schedulers (Schedulers) The Regional Director included Schedulers because they work in a group that "is part of the administrative segment that reports to the Plant Manager" and because he found their work is "an indispensable and integral part of the maintenance process." (2014 DDE at 43) As discussed, being part of the administrative segment is not a criterion in unit *placement* analysis. Also, to the extent that the Regional Director focused largely on his finding of functional integration, that

factor is not determinative. As explained above, groups of employees are not necessarily functionally integrated where each group performs separate roles and have only limited interaction with each other. In addition, "functional integration by itself is not sufficient to establish [an] overwhelming community of interest…." *A.S.V., Inc.*, 360 NLRB No. 138, slip op. at 5 (June 30, 2014). "[M]ore important than functional integration is the existence of common supervision, common skills and job functions, and common classifications and/or departments." (*Id.*, slip op. at 6)

Schedulers are not physical P&M workers, and do not share an overwhelming community of interest with the petitioned for workers. As the Regional Director found, the Schedulers interact frequently with "craft coordinators," who have been excluded from the unit. (2014 DDE at 42; TR 2066-68). Moreover, the vast majority of their work is performed at their desks in an office setting; they wear office attire, and they do not perform physical P&M work. (TR 1802-06, 1964, 2312, 1959, 6302, 2041-42) The Schedulers do not share common skills, job functions and classifications with the P&M unit and their work environment differs significantly from that of the physical P&M workers. The employer failed, therefore, to prove that they share the requisite community of interest with petitioned-for P&M employees to be included in the unit over the petitioner's objection.

b. Sr. Nuclear Planners and Nuclear Planners (Planners) Like the Schedulers, the Planners do not share an overwhelming community of interest with the physical P&M workers. They spend only about 5 hours a week away from their desks, performing "walkdowns" in the plant, accompanied by a maintenance supervisor or a maintenance employee. (2014 DDE at 44) During walkdowns, they are in the Power Block for only 5 to 10 minutes. (TR 6693) They work in an office setting --- all but three in office building 427. The

other three work in Building 110 with the FIN Team supervisors. (2014 DDE at 45) And the FIN Team Planners have little interaction with anyone in the petitioned-for P&M unit – only about an hour, or a couple of hours, per week; and even that limited contact may be with supervisors. (TR 5258-59) The Planners undergo different training than the physical P&M employees. (TR 2596, 2487, 2498-2501, 2502) The employer, therefore, failed to prove that they share the requisite overwhelming community of interest with petitioned-for P&M employees.

c. Unit Outage Coordinator (UOC) and Nuclear Outage Specialist (NOS) UOCs are planners and schedulers and not physical workers. (TR 1967) They act as "managers" during outages. (E 47, p.1) A bachelor's degree is preferred. (E47 at 2) The NOSs assist the UOCs. (TR 1968) The UOCs and NOSs are overtime exempt. (E65) The NOSs have at least a bachelor's degree, and some have a master's degree. (TR 2063-64) There is little interaction with the P&M workers. (TR 1971-72, 1975, 1978-81, 1982-83, 1984, 208-20, 5581) The UOCs and NOSs work in an office building, wearing business casual attire, they work "4/10s" Monday – Thursday, except during outages (TR 1976-77, 1987-88, 2041). They are overtime exempt and are in the higher 12.50% and 15.00% bonus tiers. (E 65, p.2) Thus, these classifications do not share an overwhelming community of interest with petitioned-for P&M employees.

d. Nuclear Workweek Coordinators (NWC) As the Regional Director found, the NWCs "interact principally with nuclear schedulers and nuclear planners as well as others … excluded from the unit …." (2014 DDE at 47) They are required to have a bachelor's degree or equivalent education and "directly related nuclear power plant experience, and proven experience leading teams or major projects." (*Id.*) Like the Schedulers and Planners, the NWCs

perform planning work and not physical P&M work and require different education and training than petitioned-for P&M employees. (*Id.*) In addition, the NWCs are exempt from overtime and are in the highest, 15%, bonus tier. These are, therefore, managerial or quasi-managerial employees who also lack an overwhelming community of interest with the petitioned-for physical P&M workers.

e. Nuclear Specialist (NS) The NS, Dale Brodsky, actually works as a Workweek Coordinator. Unlike the physical P&M unit employees, he is overtime exempt and in the highest, 15%, bonus tier. (2014 DDE at 49) For the reasons set forth directly above regarding the Nuclear Workweek Coordinators, the NS should be excluded.

f. Nuclear Technical Specialist III (NTS III) NTS III, Carl Zorn, works in the Nuclear Outage subgroup. (*Id.* at 53) The Regional Director included Zorn in the unit based on "his placement in the administrative segment that reports to the Plant Manager, and … his function is an integral part of plant maintenance." (*Id*.) Working in the same administrative segment is not, however, a unit *placement* criterion. Moreover, the NTSs differ significantly in their terms and conditions of employment from petitioned-for P&M employees: they are not covered by the NRC Fatigue Rules, do not regularly interact with P&M employees and are overtime exempt (TR 5529, 5789-90; E65 at 2). They are also in the higher, 12.50%, bonus tier. (E 65 at 2) Consequently, these NTSIIIs do not share an overwhelming community of interest with petitioned-for P&M employees.

B. Nuclear Station Safety & Licensing Department[28]

The Nuclear Safety & Licensing Department contains four groups: Licensing-Compliance; Radiological Protection & Chemistry; Nuclear Protection-Operations Procedures; and Organizational Effectiveness.

1. Licensing-Compliance Group

The Licensing-Compliance group represents the employer before various regulatory agencies and groups, including the Nuclear Regulatory Commission (NRC), EPA, Department of Homeland Security and various state agencies. The group "interfaces" with these agencies, including with a senior resident NRC inspector and two resident NRC inspectors (who are stationed at the Millstone site year-round), to address issues of compliance and required operating licenses. (TR 655-56, 669-73). In 2002, the Regional Director excluded all of the employees in the Licensing-Compliance group because of their limited contact with unit employees and their "lack of involvement in the daily production and maintenance process at Millstone." *See* 2002 DDE at 61-64. These conditions have not changed.

a. Senior Environmental Compliance Coordinators (SECCs) The SECCs have significantly different duties, skills and training, from P&M employees, and thus do not share an overwhelming community of interest with them. The SECCs prepare and submit various reports to Federal and state agencies, such as quarterly storm water monitoring reports (TR 672-74), and they "insure compliance with environmental requirements" by a "presence in the field, electronic communications, telephone communications, written communications with the various departments that are performing functions that could impact the environment." (TR

[28] The Regional Director did not address classifications in the Nuclear Station Safety & Licensing Department because it was not within the scope of the unit he found appropriate. Petitioner nonetheless urges the Board to rule on these classifications in the interest of avoiding further delay in this case.

681) The SECCs have also designed computer-based environmental training. (TR 664-66) They have limited contact with P&M Unit personnel (TR 681-86, 692, 694-700, 745, 5607-08, 6752-53), work in an office building away from physical P&M employees (TR 700, 703), and are exempt and in a higher (12.50) bonus percentage tier than the petitioned-for employees (TR 703; E 65, p.2).

b. Nuclear Engineer IIIs (NEIIIs) The NEIIIs should be excluded from the unit as obvious professional employees, similar to other NEIIIs the Regional Director excluded from the bargaining unit on this basis. (2014 DDE at 81-82) These NEIIIs similarly have Bachelor's Degrees in engineering, and one NEIII has a PhD in nuclear engineering. (TR 713-14, 727, 734, 728-29) The duties of the NEIIIs in this Group variously include making "reportability determinations" on behalf of the plant (TR 712-13), handling "correspondence to support updates, … renewals, and submission of initial license applications" for individual licensed Control Operators and Senior Control Operators (TR 707-08), coordinating the preparation of a package of information for quarterly management safety review committee meetings (TR 708-09), and developing and coordinating review and approval of NRC license amendment requests, technical specification amendment requests, and changes to the technical requirements manual (TR 713-14). They are professional employees. *See, e.g., Utah Power and Light Co.*, 258 NLRB 1059 (1981).

These NEIIIs also spend most of their time in their offices on the fifth floor of Building 475. (729-30, 734). They are all overtime exempt and are in a higher, 12.50, bonus percentage tier than the petitioned-for employees. (E 65 at 2) Even if they are were professional employees, their differing skills, backgrounds, working conditions and compensation, as well as

the fact that they perform no physical work, establish that they do not share an overwhelming community of interest with the petitioned-for P&M employees

c. Nuclear Technical Specialist III (NTSIIIs) NTSIIIs' duties include coordinating a performance test twice a year (TR 688-89), coordinating legal issues with the employer's corporate counsel (TR 711), making "reportability determinations" on behalf of the plant (TR 712-13), and collecting and submitting performance data to the Institute of Nuclear Power Operations (TR 711-12). They spend most of their time in their offices on the fifth floor of Building 475 (TR 700), are overtime exempt and are in a higher (12.50) percentage bonus tier. (E65) They are professional employees. *See, e.g., Utah Power and Light Co.*, 258 NLRB 1059 (1981). They also do not share a community of interest with the petitioned-for production and maintenance employees for the additional reasons that they have significantly different duties, skills, supervision, terms and conditions of employment, and work locations than P&M employees. And there is very little interaction, and no interchange with them.

2. Radiological Protection & Chemistry Group

a. Health Physics Operations Subgroup

i. Radioactive Material Technician II (RMT II) RMT IIs collect, package, and ship radioactive waste. (E 35; TR 1491) Their training and certification focus on the "packaging of radioactive waste or hazardous waste" and not on protecting individuals from radiation exposure (TR 1491) They serve a building maintenance rather than a P&M function. (TR 1521) With the exception of 1 out of the 34 Health Protection Technicians ("HP Techs"), the RMT IIs are separately supervised in different groups from anyone in the petitioned-for P&M unit. (P17 at 84-90) They have contact with Plant Equipment Operators ("PEOs") only quarterly or monthly. (TR 2318) There is no evidence of regular work interaction or interchange with

employees in the petitioned-for P&M unit and the RMT IIs use different skills and require different qualifications. They do not, therefor, share an overwhelming community of interest with petitioned-for P&M employees.

ii. Coordinator – Health Physics (C-HP) The C-HP serves an oversight/ managerial function: he "[r]eviews and coordinates daily and long range scheduled Radiological Protection activities to support operations"; "[i]nterpret[s] … policies and procedures and analalyze[s] exposure data and make[s] recommendations"; "[m]aintain[s] compliance with established industry and NRC guidance." (E 36, p.1; TR 1493, 1535-36) The employer prefers C-HP applicants to have at least a bachelor's degree (E36 at 2), and C-HP Robert King has a bachelor's degree (TR 1494). He also has distinct skills and training from P&M employees; primarily interacts with an HP Outage Planning Supervisor and two HP Techs who are assigned to perform online and outage work planning tasks (TR 1561-62); spends approximately 60 percent of his time at his desk and 40 percent in meetings (TR 1568); and is viewed as a supervisor. (TR 6610-11, 3321) I&C Supervisor Hughes testified "all the coordinators are also supervisors." (TR 3321) The C-HP is overtime exempt and in the upper, 12.50%, bonus tier. (E 65, p.2; TR 1555) The C-HP is either a professional employee, as well as supervisory or quasi-managerial. In any event this C-HP does not share an overwhelming community of interest with petitioned-for P&M employees.

iii. Health Physicist II and III (HP II and III) The HP IIs and IIIs "[m]aintain the Personnel Radiation Exposure Management System (PREMS) and administer associated contracts" (E 31); "[r]eview and evaluate new regulatory requirements and industry technology concerning radiological protection" (E 37); and perform analyses after the HP Techs collect samples (TR 1499, 1588-89) The employer prefers PH IIs and IIIs to have a bachelor's

degree, and most have at least a bachelor's degree and some have a master's degree. (E 31, 37, 34; TR 1644) There is no evidence of work interaction or interchange between the HP IIs and IIIs and any classification in the petitioned-for unit. (TR 5584, 6278, 6525) These employees are overtime exempt and in a higher, 12.50%, bonus tier. (E65 at 2) They appear to be professionals who, in any event, do not share an overwhelming community of interest with the petitioned-for P&M employees.

iv. Technical Specialist II (TS II) and Nuclear Technical Specialist III (NTS III) TS IIs do not perform physical work in the plant (TR 5584, 5907, 5773, 5813, 6169-70, 6180, 6190-91, 6285-86, 6333, 6455), and are overtime exempt and are in a higher, 10.00%, bonus tier that petitioned-for P&M employees. (E65 at 1) The NTS III also is overtime exempt and in a higher, 12.50%, bonus tier. (E 65, p.2) There was no evidence that the TS II and NTS III interchange with petitioned for employees. Accordingly, the employer failed to prove that they share an overwhelming community of interest with petitioned-for P&M employees.

b. Nuclear Chemistry Subgroup

i. Chemist III (CIII) CIIIs are professionals and/or technical employees who use different skills and have different working conditions and terms of employment from the petitioned-for P&M workers, and do not interchange or work directly with them. (TR 1243-45) CIIIs direct the employees who actually perform the hands-on work in the field. (TR 1333, 1352-55) A CIII may on occasion observe Chem Techs working in the field. (TR 1334). They have only miniscule contact by phone or memo with Control Room Operations. (TR 996-97, 999-1000, 1074-75, 2314, 5585, 6525, 6277-78) For CIIIs a bachelor's degree is preferred, and the position requires a combination of education and experience. (E 30; TR 1453) The CIIIs have associate degrees in chemical engineering or bachelor's degrees. (TR

1450-51) CIIIs perform complex tasks using LabStats software. (TR 1480-81) CIIIs are overtime exempt, and are in a higher, 12.50%, bonus tier. (E65 at2; TR 1442). They do not, therefore, share an overwhelming community of interest with petitioned-for P&M employees.

ii. Health Physicist II (HPII) The HP II in the Chemistry Department works primarily with a Nuclear Engineer III to collect well samples to monitor for contamination. (TR 1380-81) He does not work with any classification in the petitioned-for unit, other than "sometimes" with a Chem Tech. (TR 1414) A bachelor's degree is preferred for the HP II position, as the HP II is responsible for performing instrumentation evaluations, operating parameter analyses, and providing radiological solutions for ALARA concerns. (E 31) The HP II is overtime exempt and in a higher, 12.50%, bonus tier. (E 65, p.2; TR 1442) Thus, the HP II has distinct job functions, performs distinct work, and has only infrequent contact and no interchange with petitioned-for P&M workers, and thus does not share an overwhelming community of interest with them.

iii. Technical Specialist II (TS II) The TS II is an office clerical who orders chemicals and equipment for the Chemistry Department and (TR 1406) serves as the Chemistry Department's Corrective Action Coordinator, monitoring due dates. (TR 1406-07) She reviews all closure notes for every corrective action to be sure the closure notes are in order, and if so, gives them her required electronic okay. (TR 1408) The TS II spends most of her time at her desk and has very little interaction and no interchange with P&M workers (TR 1410, 1412, 1466). She does not perform any chemical analyses or manipulate any plant components. (TR 1445-46) An associate or bachelor's degree is preferred. (E 10) The TS II is overtime exempt and in a higher, 10.00% bonus tier. (E 65) The TS II was excluded from the unit in 2002 as an office clerical (2002 DDE at 48), and this remains an office clerical position.

iv. Nuclear Technical Specialist III (NTS III) The NTS III works with a Nuclear Engineer III on problems associated with the radiation monitors, only some of which are inside the RCA. (TR 1399-1405) There is no face-to-face interaction between the NTS III and anyone in the petitioned-for P&M unit and no evidence of interchange, and he does not share their working conditions. (TR 1399-1405) A bachelor's degree is preferred for the NTS III position. (E 11) Engineers and NTSs are used interchangeably. (TR 1066-67) The NTS III is most likely a professional or a technical employee. The NTS III has distinct job skills and duties from the physical P&M workers and is overtime exempt and in a higher, 12.50%, bonus tier. (E 65, p.2) Regardless of the NTS III's status as a technical or professional employee, the employer failed to prove that he shares an overwhelming community of interest with petitioned-for P&M employees.

v. Nuclear Engineer III (NE III) Other Millstone NE IIIs have been excluded from the unit as professionals, with the Board's approval. (2014 DDE at 30, 38 n.27, 82; NLRB Aug. 1 Order n.1) This position similarly requires a bachelor's degree and a professional engineering license, and both NE IIIs have a bachelor of science engineering degree (E 10, pp.2-3; TR 1453, 1478-79, 1371, 1451, 1453) One NE III does not perform any work with P&M workers and the other *may* on occasion attend a pre-job brief with Control Operators and Plant Equipment Operators. (TR 1328-30) They work almost exclusively with excluded classifications. (TR 1374-75, 1377, 1384, 1385, 1372-86) NE IIIs are overtime exempt and in a higher, 12.50%, bonus tier. (E 65, p.2; TR 1442) They are professional employees and do not share a community of interest with petitioned-for physical P&M workers.

3. Organizational Effectiveness

Employees in Organizational Effectiveness have very different duties from the employees in the petitioned-for unit. They monitor, evaluate, and improve human performance at the station. (TR 4309) To that end, they (1) attend department self-evaluation meetings (TR 4310-14); (2) conduct field observations focused on the proper implementation of various "human performance tools" promulgated by the Organizational Effectiveness group (TR 4299; 4314-31); (3) facilitate "human performance tools" training (TR 4334-38); (4) review and coordinate responses to condition reports (TR 4663-68); (5) coordinate with the Institute of Nuclear Power Operations (INPO) (TR 4339-44); and (6) provide oversight of the facility's cause evaluation program (TR 4372-79).

These duties, which are generally focused on human performance and corrective action, are administrative in nature and more closely aligned with the interests of management. All employees in the Organizational Effectiveness observe a business casual dress code (TR 4436-37), and they do not share common immediate supervision (E140), work location (TR 4299), or duties (TR 4309) with the P&M unit employees. In addition, the **Nuclear Engineer IIIs and the Nuclear Technical Specialist IIIs** are exempt employees (TR 4307), and both classifications are highly-compensated and fall within the 12.50 percentage annual incentive tier (E65). The **Technical Specialist II** is also exempt, and she falls within the 10.00 annual incentive tier. (E65) The **Administrative Assistant III** performs office clerical duties, that is, "traditional administrative functions" in support of the Organizational Effectiveness group's general office operations. (TR 4395) None of these employees shares such an overwhelming community of

interest with petitioned-for physical production and maintenance employees that they must be included in the P&M unit over petitioner's objection.[29]

4. Nuclear Protection-Operations Procedures Group

a. Nuclear Procedures Writers I, II, III (NPW) NPWs make changes to existing procedures and create new procedures for work that is performed on site. (TR 2759-60) There is little face-to-face interaction between NPWs and petitioned-for P&M workers. (TR 2682-83) NPWs work at desks, using computer software (TR 2784, 2782-83, 2806, 2812-13, 2853, 2857, 2858, 3015-16), where they spend the vast majority of their time. (TR 2795-96, 2812, 2879-84) They do not have the qualifications and authorization to touch or manipulate the fine controls of the turbine or the reactor of Units 2 or 3 (TR 6803-04); they do not perform any of the hands-on work in the Power Block; and they are not covered by the NRC Fatigue Rules as "covered workers." (TR 6808, 5789-90, 6173-74) Their expected dress is business casual. (TR 2897) They have different training and job skills than P&M workers.

Although Procedures Writers were included in the unit in 2002, it was by agreement of the parties, and at that time, some Procedures Writers were Maintenance Department employees. That is no longer the case: now all the procedure writing work is performed by Procedures Writers assigned to the Procedures group in Building 475 – a business office setting. (TR 3137-40, 3342-43). Therefore, Procedures Writers no longer share supervision with any employees in the petitioned-for P&M unit, and do not have an overwhelming community of interest with them.

b. Technical Specialist (TS) The TS in the Nuclear Protection-Operations Procedures group, Kathie Cassidy, is an "administrative assistant" who performs clerical tasks and has no interaction with anyone in the petitioned-for unit. She keeps track of the Procedures

[29] The Regional Director concluded that Nuclear Engineers III in other departments should be excluded as professional employees. (DDE at 30, 38) He also concluded that Administrative Assistants III in other departments should be excluded as office clericals. (DDE at 88)

Writers' assignments and makes sure they properly close out their assignments. And she performs timekeeping for the group. (TR 2863, 2902-04). She should be excluded as an office clerical employee. *See, e.g., Westinghouse Electric Corp.,* 118 NLRB 1043 (1957).

CONCLUSION

For all of the foregoing reasons, the Board should find that organizations reporting directly to Site Executive and Vice President, Stephen Scace, in an appropriate unit in scope for bargaining. The Board should additionally find that petitioner has described a readily identifiable group of physical P&M employees who share a community of interest; and that the employer has failed to meet its burden of proving that additional employees it seeks to add to the unit share an overwhelming community of interest with petitioned-for P&M employees.

Respectfully submitted,

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I hereby certify that I served a copy of Petitioner's Brief on Review, on August 22, by e-mail, on:

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